162 US 326

TRANSCRIPT OF RECORD.

162-326

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 146.

JUSTUS HOLLANDER, SAMUEL BIEBER, WILLIE HOLLANDER, ET AL., APPELLANTS,

vs.

MARTIN S. FECHHEIMER, HENRY GOODKIND, HENRY KRONTHAL, CHARLES E. ADLER, AND CHARLES FISHEL, PARTNERS AS FECHHEIMER, GOODKIND & CO.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED AUGUST 20, 1892.

(15,107.)

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a In the Supreme Court of the District of Columbia.

MARTIN S. FECHHEIMER, HENRY GOODKIND, HENRY KRONTHAL, Charles E. Adler, and Charles Fishel, Partners, Trading under the Firm Name of Fechheimer, Goodkind and Co.,

vs.

JUSTUS HOLLANDER, SAMUEL BIEBER, WILLIE HOLLANDER, JULIUS Lansburgh, Elias Travers, James Hollander, The National Metropolitan Bank, The National Bank of Washington, Daily Post Company, National Republican Company, Evening Critic Company, William H. Slater, Edward Hollander, and John Elliott, Charles C. Glover, Thomas Hyde, E. Francis Riggs, Thomas L. Riggs, and Alexander Elliott, Partners, Doing Business under the Firm Name of Riggs and Co.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss*:

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill.*

Filed July 28, 1886.

In the Supreme Court of the District of Columbia.

MARTIN S. FECHHEIMER, HENRY GOODKIND, HENRY Kronthal, Charles E. Adler, and Charles Fishel, Partners, Trading under the Firm Name of Fechheimer, Goodkind and Co.,

vs.

JUSTUS HOLLANDER, SAMUEL BIEBER, WILLIE HOLlander, Julius Lansburgh, Elias Travers, James Hollander, The National Metropolitan Bank, The National Bank of Washington, Theodore Hollander, Charles Baum, A. Kaufman, Daily Post Company, National Republican Company, Evening Critic Company, William H. Slater, Edward Hollander, and John Elliott, Charles C. Glover, Thomas Hyde, E. Francis Riggs, Thomas L. Riggs, and Alexander Elliott, Partners, Doing Business under the Firm Name of Riggs and Co.

Equity. No. 10107.

Bill in equity.

1. The plaintiffs are a firm doing business in the cities of New York and San Francisco. Martin S. Fechheimer and Henry Goodkind reside in New York city, and Henry Kronthal, Charles F.

Adler, and Charles Fishel are residents of the city of San Francisco, California, and they bring this suit in their own right.

2. The defendants are all residents of the District of Columbia, and are respectively sued in their own rights except the defendant Bieber, who is sued as assignee.

3. The plaintiffs obtained judgment against the defendant Justus Hollander in the supreme court of the District of Columbia on the 9th day of July, 1886, for the sum of one thousand dollars, with interest at the rate of seven per cent. per annum from the 15th day of February, 1886, and costs of suit, upon which execution
2 was issued and returned by the marshall "*nulla bona*," as will more fully appear by reference to a short copy of said judgment, herewith filed, marked Exhibit (A), and made part of this bill.

4. The defendant Justus Hollander has for several years been engaged in the clothing business in the city of Washington and has, as plaintiffs believe and charge, been insolvent for more than a year last passed. On the 15th day of June, 1886, he made a deed of assignment to the defendant Samuel Bieber, his heirs, executors, administrators, and assigns, of all and singular his lands, tenements and hereditaments, real estate and chattels real, and of all his goods, wares, and merchandise, personal property, chattels, and effects in possession or action, and all estates and interests whatsoever, whether real, personal, or mixed, and all debts, sums of money, balance of account, promissory notes, bills of exchange, drafts, lands, judgments, claims, and demands, and other securities now belonging, due, or to become due or payable to the said Justus Hollander, "including all the stock in trade, fixtures, and paraphernalia now in and upon premises known as No. 1217 Pennsylvania avenue northwest, in the city of Washington, known as the Excelcior clothing-house, the said stock consisting of gentlemen's furnishing goods, clothing, sachels, hats, and caps, excepting, nevertheless, such property as is by law exempt from execution."

5. No description of the property conveyed is contained in the deed of assignment nor are there any accompanying schedules showing what the property assigned consists of, save only a reference to a stock of gentlemen's furnishing goods and clothing, &c., upon the premises known as No. 1217 Pennsylvania avenue northwest.

The deed contains all the forms and legal phraseology for conveying lands as well as chattels, but no lands are described nor is there any schedule or description of notes, accounts, drafts, or anything else by which such property could be identified; neither is there anything to indicate what the goods in the store referred to consists of or by which they could be identified. The plaintiffs in-
sist that for want of a description of the property conveyed
3 or accompanying schedules the said deed of assignment is, as to creditors not accepting it, fraudulent and void, and these plaintiffs not only do not accept it, but bitterly repudiate it as a fraud upon them. A copy of said assignment is herewith filed,

marked Exhibit (B), which it is prayed may be taken as a part of this bill.

6. Since the making of said assignment the plaintiffs have received from the assignee a printed slip purporting to be a statement of the indebtedness, general and preferred, and of the assets of the said Justus Hollander which have come into his hands. A copy of said printed slip is herewith filed, marked Exhibit (C), which it is prayed may be taken as a part of this bill.

By this statement it appears that the stock of goods has been

appraised at	$17,505 33
Fixtures	263 00
Book accounts, $713.05, worth about	300 00
Making a total of	18,068 33

The assignee does not say so in his statement, but the presumption is that this is all the property he has received under said deed of assignment. Whether there was any other property or not plaintiffs are not advised.

By this statement it appears that the aggregate indebtedness of the said Justus Hollander at the time of the assignment was $39,020.93, of which there are preferred debts amounting to $14,744.71. By this showing there is an excess of $3,323.62 in the appraised value of the assets over the preferred debts. After deducting the expenses, costs, and charges of carrying into effect the trust, including a commission of ten per cent. to the assignee, all of which are required by the deed to be first paid out of the fund realized from the conversion of the assets, it is manifest, if the full appraised value was realized from the assets, there would not be more than enough to pay the preferred debts in full, leaving nothing for the general or unpreferred creditors, whose claims, according to the assignee, amount to $24,276.22.

4 7. The plaintiffs are wholesale clothing merchants, and the judgment which they hold against the defendant was for goods sold the said Justus Hollander in the month of October, 1885.

The plaintiffs hold also a note for $1,000 given by the said Justus Hollander to them February 15th, 1886, payable four months after date at Riggs and Co., with interest at seven per cent. per annum until paid, a copy of which is herewith filed, marked Exhibit (D), which it is prayed may be taken as a part of this bill.

This note was also given for goods sold and delivered by the plaintiffs to the said Justus Hollander in the month of October, 1885.

The said Justus Hollander is further indebted to the plaintiffs in the sum of eighteen hundred and forty-six dollars and fifty cents ($1,846.50) for goods purchased by the said Hollander from the plaintiff on the 3rd of April and 7th of April and 15th of April, 1886. A copy of said account is herewith filed, marked Exhibit (E), which it is prayed may be taken as a part of this bill.

No part of the plaintiffs' judgment, note, or account has been paid, although prior to the assignment the said Hollander promised

plaintiffs to make them some payments on account, but he failed to do so.

8. The whole of the last purchases, amounting to $1,840.50, were made within but little more than two months before the said Hollander made his assignment on the 15th of June, 1886, and, as plaintiffs have reason to believe and so charge, that the said Hollander had sold but very little of the goods purchased by him from the plaintiffs in the month of April, 1886, at the time he made his said assignment, and that the bulk of said goods was still in the store of the said Hollander and passed by said assignment into the hands of the assignee to be sold for the benefit of his preferred alleged creditors, in which the plaintiffs are not included. The plaintiffs are also informed and believe, and so believing charge, that the said defendant, Justus Hollander, made other purchases
5 of large amounts of goods from other wholesale dealers upon credit but a short time before he made his assignment, which goods, like those of the plaintiffs, were still remaining in the store of the said Hollander at the time of his assignment and passed into the hands of the said assignee.

9. The plaintiffs charge that when the said Justus Hollander made these last spring purchases from them and other merchants he well knew that he was hopelessly insolvent, and that he did not intend to and knew that he could not pay for said goods, which facts he concealed from the plaintiffs, and they dealt with him believing him to be both honest and financially responsible. Indeed it is apparent from the showing made by the assignee that the said Hollander must have known for more than a year that he was insolvent, but when he made his spring purchases his whole assets, according to the showing made by the assignee, could not have amounted to more than one-third of his indebtedness, even considering the assets at the appraised value. The plaintiffs say that the last April purchases from them were fraudulent, and that they would have been entitled to disaffirm the contracts of sale and reclaim their goods, but their goods had been so mingled with the goods purchased from other dealers and the old stock that it would be difficult, if not impossible, to identify them. The plaintiffs did not discover how they had been imposed upon and defrauded by the defendant Justus Hollander until after his assignment.

10. The following are the preferred debts as they are set out in the deed of assignment:

List of Preferences under Assignment from Justus Hollander to Samuel Bieber.

"To pay 1st in full to Willie Hollander $293.83 for goods sold and delivered by him to party of the first part.

2nd. To James Hollander $564.40 for services rendered, cash loaned, and stock sold by him to said party of the first part.

3rd. To Julius Lansburgh on note of said party of the first
6 part for $47.50, dated May 15th, 1886, in one (1) month, to

order of said Lansburgh at Second National bank, with seven per cent. interest.

4th. To Elias Travers, note of said party of the first part for $100, dated Dec. 19th, 1885, payable to order of James Hollander, 6 months after date, with eight per cent. till paid, and by said James Hollander indorsed.

5th. To same, note of said party of the first part for $100, dated Nov. 27th, 1885, payable to order of Theodore Hollander, 7 months, with 8 per cent. till paid, and by said Theodore Hollander endorsed.

6th. To same, note for $200, dated Aug. 28th, 1885, to order of Theodore Hollander in 10 months, with 8 per cent. till paid, and by said Theodore Hollander endorsed.

7th. To National Metropolitan bank, note for $200, dated May 4th, 1886, and payable sixty days, to order of Theodore Hollander, 7 per cent. till paid, at Riggs and Co., and by Theodore Hollander endorsed.

8th. To Elias Travers, note for $100, dated Feb. 12th, 1886, and payable to order of Theodore Hollander, 5 months, 8 per cent. till paid, and by said Theodore endorsed.

9th. To same, note for $200, dated Oct. 14th, 1885, to order of Theodore Hollander, 9 months, 8 per cent. till paid, and by said Theo. Hollander endorsed.

10th. To same, note for $100, dated Jan. 15th, 1886, to order of Theo. Hollander in 6 months, 8 per cent. till paid, and by said Theo. Hollander endorsed.

11th. To same, note for $100, dated Dec. 19th, 1885, to order of Jas. Hollander, 7 months after date, 8 per cent. till paid, and by said Jas. Hollander endorsed.

12th. To same, note for $100, dated Feb. 19th, 1886, to order of Theo. Hollander, 5 months, 8 per cent., and by said Theo. Hollander indorsed.

13th. To same, note for $100, dated March 26th, 1886, to order of Theo. Hollander in 4 months, 8 per cent., and by said Theo-
7 dore Hollander endorsed.

14th. To same, note for $200, dated Nov. 27th, 1885, to order of Theodore Hollander, 8 months, 8 per cent., and by him endorsed.

15th. To Messrs. Riggs and Co., note for $250, dated June 10th, 1886, to order of E. Hollander in 60 days, 7 per cent. till paid, at Riggs and Co., by said E. Hollander endorsed.

16th. To National Bank of Washington, note for $300, dated May 6th, 1886, drawn by Charles Baum for accommodation of party of the first part, payable to order of said Justus Hollander, 3 months after date, 7 per cent. till paid at above bank, and by said Justus Hollander and Hollander and Bros. in liquidation endorsed, the said note having been negotiated by said party of first part for his own and sole benefit.

17th. To same, note drawn by A. Kaufman for accommodation of said party of first part for $100, dated May 26th, 1886, and payable to order of said party of first part, 2 months after date, said

note negotiated by said Justus Hollander for his own and sole benefit.

18th. To Messrs. Riggs and Co., note for $300, dated May 12th, 1886, to order of Theo. Hollander, in 3 months after date, at Riggs and Co., 7 per cent. till paid, and by said Theo. Hollander endorsed.

19th. To Elias Travers, note for $100, dated Feb. 12th, 1886, to order of Theo. Hollander, 6 months, 8 per cent. till paid, and by said Theo. Hollander endorsed.

20th. To same, note for $200, dated Oct. 14th, 1885, to order of Theo. Hollander, 10 months, 8 per cent. till paid, and by said Theo. Hollander endorsed.

21st. To same, note for $100, dated January 15th, 1886, to order of Theo. Hollander, 7 months after date, 8 per cent. till paid, and by said Theo. Hollander endorsed.

22nd. To same, note for $100, dated Feb. 19th, 1886, to order of Theo. Hollander, 6 months, 8 per cent., and by him endorsed.

23rd. To same, note for $100, dated March 26th, 1886, to
8 order of Theo. Hollander, 5 months, 8 per cent., and by him endorsed.

24th. To same, note for $200, dated Nov. 27th, 1885, to order of Theo. Hollander, 9 months, 8 per cent., and by him endorsed.

25th. To Messrs. Riggs and Co., note for $325, June 11th, 1886, to order of E. Hollander, 60 days, 7 per cent. till paid at Riggs and Co., and by said E. Hollander endorsed.

26th. To Elias Travers, note for $100, dated Feb. 12th, 1886, to order of Theo. Hollander, in 7 months, 8 per cent. till paid, and by him endorsed.

27th. To Elias Travers, note for $100, dated May 12th, 1886, to order of Theo. Hollander, 4 months, 8 per cent., and by him endorsed.

28th. To same, note for $200, Jan. 15th, 1886, to order of Theodore Hollander, 8 months, 8 per cent., and by him endorsed.

29th. To same, note for $100, Feb. 19th, 1886, to order of Theo. Hollander, in 7 months, 8 per cent., and by him endorsed.

30th. To same, note $100, March 26th, 1886, order of Theo. Hollander, 6 months, 8 per cent., and by him endorsed.

31st. To same, note $200, Nov. 27th, 1885, order of Theo. Hollander, 10 months, 8 per cent., and by him endorsed.

32nd. To Messrs. Riggs and Co., note $250, May 27th, 1886, order Julius Lansburgh, 90 days, at Riggs and Co., 7 per cent., and by him endorsed.

33rd. To National Bank of Washington, note $475, May 12th, 1885, and drawn by Charles Baum for accommodation of party of the first part, payable to order of said Justus Hollander, 3 months, at said bank, 7 per cent., and by said Justus Hollander negotiated for his own and sole account.

34th. To Messrs. Riggs and Co., note $250, June 3rd, 1886, order of E. Hollander, in 90 days, 7 per cent. till paid at Riggs and Co., and by said E. Hollander endorsed.

35th. To National Bank of Washington, note $625, May 20th, 1886, drawn by Theo. Hollander to order of Chas. Baum, 3 months,

7 per cent. till paid at National Metropolitan bank, by said Justus Hollander endorsed, said note having been drawn and endorsed by the said Theo. Hollander and Chas. Baum for the accommodation of said party of first part and by him negotiated for his own and sole benefit.

36th. To Elias Travers, note $100, June 7th, 1886, to order of Theo. Hollander, 4 months, 8 per cent., and by him endorsed.

37th. To same, note $100, May 12th, 1886, order of Theo. Hollander, in 5 months, 8 per cent., and by him endorsed.

38th. To same, note $200, Feb. 12th, 1886, to order of Theo. Hollander, 8 months, 8 per cent., and by him endorsed.

39th. To same, note $200, Jan. 15th, 1886, order of Theo. Hollander, 9 months, 8 per cent., and by him endorsed.

40th. To same, note $200, Feb. 19th, 1886, order Theo. Hollander, in 8 months, 8 per cent., and by him endorsed.

41st. To same, note $100, March 26th, 1886, order Theo. Hollander, 7 months, 8 per cent., and by him endorsed.

42nd. To Messrs. Riggs and Co., note of A. Kaufman for $175, dated June 9th, 1886, and payable to order of said party of first part in 90 days, 7 per cent., at Second National bank, the same having been drawn by said Kaufman for accommodation of said party of first part, and by him negotiated for his own and sole benefit.

43rd. To Elias Travers, note $100, order Theo. Hollander, in 5 months, 8 per cent., and by him endorsed, dated June 7th, 1886.

44th. To same, note $100, May 12th, 1886, order Theo. Hollander, in 6 months, 8 per cent., and by him endorsed.

45th. To same, note $200, Feb. 12th, 1886, order Theo. Hollander, 9 months, 8 per cent., and by him endorsed.

46th. To same, note $200, Jan. 15th, 1886, order Theo. Hollander, 10 months, 8 per cent., and by him endorsed.

47th. To same, note $200, Feb. 19th, 1886, order Theo. Hollander, 9 months, 8 per cent., and by him endorsed.

48th. To same, note $200, March 26th, 1886, order Theo. Hollander, 8 months, 8 per cent., and by him endorsed.

49th. To Messrs. Riggs and Co., note $475, May 27th, 1886, order Chas. Baum, in 90 days after date, 7 per cent. till paid at Riggs and Co.

50th. To Elias Travers, note $100, June 7th, 1886, order Theo. Hollander, 6 months, 8 per cent., and by him endorsed.

51st. To same, note $200, May 12th, 1886, order Theo. Hollander, 7 months, 8 per cent. till paid, and by him endorsed.

52nd. To same, note $200, Feb. 12th, 1886, order of Theo. Hollander, 10 months, 8 per cent., and by him endorsed.

53rd. To same, note $200, Feb. 19th, 1886, order Theo. Hollander, 10 months, 8 per cent., and by him endorsed.

54th. To same, note $200, March 26th, 1886, order Theo. Hollander, 9 months, 8 per cent., and by him endorsed.

55th. To National Bank of Washington, note $825, June 10th, 1886, drawn by E. Hollander to order Chas. Baum, 3 months, at said bank, 7 per cent., and by said party of first part endorsed, the

same being drawn and negotiated by said E. Hollander and Chas. Baum for the accommodation of said party of first part and by him negotiated for his own and sole accommodation.

56th. To Elias Travers, note $100, June 7th, 1886, to order Theo. Hollander, 7 months, 8 per cent., and by him endorsed.

57th. To same, note $300, May 12th, 1886, order Theo. Hollander, 8 months, 8 per cent., and by him endorsed.

58th. To same, note $200, March 26th, 1886, order Theo. Hollander, 10 months, 8 per cent., and by him endorsed.

59th. To same, note $100, June 7th, 1886, order Theo. Hollander, 8 months, 8 per cent., and by him endorsed.

60th. To Louis Heller, $100 for money loaned by him to said party of first part.

61st. To Elias Travers, balance due on note for $1,000, Nov. 9th, 1886, order Jas. Hollander, 1 year, and by him endorsed; the said note to be repaid in weekly instalments of $20, and on which there is yet due $380.

62nd. To Julius Lansburgh, note $518.98, May 10th, 1886, to order Julius Lansburgh, 60 days, at Riggs and Co., 6 per cent.

11 63rd. To same, $1,000 upon 10 notes, Dec. 8th, 1883, each being for $100, to order of Henry Franc, in, respectively, 31, 32, 33, 34, 35, 36, 37, 38, 39, and 40 months, 10 per cent., and by said Franc endorsed.

64th. To Daily Post Pub. Co., note $200, March 10th, 1886, order of said Co., 3 months, at Riggs and Co.

65th. To National Republican Co., note $160, April 14th, 1886, order of said Co., 3 months after date.

66th. To Evening Critic Pub. Co., note $130, April 15th, 1886, order of said Co., 3 months.

67th. To W. H. Slater, note $200, May 7th, 1886, to his order 30 days after date.

68th. To same, note $200, May 11th, 1886, to his order 30 days after date."

11. From the foregoing list it appears that there are sixty-eight preferred debts, amounting in the aggregate to nearly fifteen thousand dollars, and not one of the creditors from whom the goods in the store were purchased on credit is embraced in the preferances. The unpreferred debts, according to the showing of the assignee at the time of the assignment, amounted to $24,276.22, the bulk of which, if not the whole of it, as plaintiffs believe and charge, is for goods purchased, and which were then and had from time to time gone into the store of the said Justus Hollander to keep up his business.

It is true that the first preference is to Willie Hollander, which purports to be for $293.83 for goods. Willie, plaintiffs are informed, is a brother of the said Justus, living in Washington, and he is not in the wholesale clothing business, and the plaintiffs believe and charge that this pretended debt is a fraud.

The second preference is in favor of James Hollander, another brother of the said Justus, for $564.40 for services rendered and

stock sold by him to said Justus. What proportion was for
12 goods and what for services and what the goods and what the services were we are not informed. Plaintiffs believe, and so believing charge, that the debt is fraudulent. With these exceptions, if they be *bona fide*, the creditors who furnished the goods assigned are entirely cut off from any dividends out of the assets furnished by them.

12. The defendant Elias Travers is preferred to the amount of $6,380.00. This sum is made up of forty-four different notes, all of which are for $100 and $200 each except one, which is a balance upon a note for $1,000, due Nov. 9th, 1886, of $380. When the rate of interest is given it is uniformly at 8 per cent. per annum.

Plaintiffs are informed and believe, and so charge, that the said Travers is a money-lender, who for a long time has been loaning money to the defendant Justus Hollander at high rates of interest; that these several notes are most, if not all, of them renewals of former notes, extending back in some instances for years, and that but little, if any, of the indebtedness to the defendant Travers is of recent origin. Some of the notes set out in the deed of assignment are dated as far back as August, 1885. Upon all of these notes, according to the deed of assignment, Theodore Hollander is surety, who is, as plaintiffs are informed, a brother of the said Justus Hollander and is, as plaintiffs believe, responsible.

Plaintiffs do not admit that these notes are for *bona fide* indebtedness, but deny the same and demand strict proof thereof.

13. The National Bank of Washington is also a preferred creditor to the amount of $2,325. This amount, according to the assignment, is made up of five separate notes. The first, being the 16th preference, is a note for $300, dated May 6th, 1886. Charles Baum appears to be the maker and Justus Hollander and Hollander and Brothers endorsers. Plaintiffs do not know the origin of the transaction, but charge that it is a renewal of a former note in
13 whole or in part. Charles Baum is the party primarily liable upon this note, and he is, as plaintiffs are informed, good. The brother of Justus Hollander is also an endorser upon the note, and he is also good, as the plaintiffs believe.

The second preference in favor of the Bank of Washington, as set out in the 17th of the preferences, according to the description in the deed, is a note for $100, dated May 26th, 1886, drawn by A. Kaufman for the accommodation of the said Justus Hollander and endorsed by him.

Plaintiffs know nothing as to the *bona fides* or the origin of said note, and, without admitting, but denying, that it is *bona fide*, they charge that it is a renewal of an antecedent transaction. A. Kaufman is the party primarily liable thereon to the said National Bank of Washington, and plaintiffs believe him to be good.

The third preference in favor of said Bank of Washington is No. 33 of the preferred debts in the deed of assignment. As appears by said deed, it is a note for $475, dated May 15th, 1886, drawn by Charles Baum for the accommodation of the said Justus Hollander and endorsed by him. The plaintiffs, without admitting, but de-

nying, the *bona fides* of said note, charge that it is a renewal, in whole or in part, of an antecedent transaction. Charles Baum is the party primarily liable to the bank.

The fourth preference in favor of the Bank of Washington, as described in the assignment, is a note for $625, dated May 20th, 1886, drawn by Theodore Hollander to the order of Charles Baum and endorsed by the said Justus Hollander. The parties primarily liable to the bank are Charles Baum and Theodore Hollander.

The fifth preference in favor of the Bank of Washington, according to the assignment, is a note for $825, dated June 10th, 1886, drawn by E. Hollander to the order of Charles Baum for the accommodation of the said Justus Hollander. The parties primarily liable to the bank are Charles Baum and E. Hollander.

14 Without admitting the *bona fides* of this note, which they deny, the plaintiffs charge that it is a renewal, in whole or in part, of an antecedent indebtedness. The oldest of these notes was made but 40 days prior to the assignment and the last one, for $825, but five days. The others were intermediate. Within this short time before the assignment this insolvent trader obtained from the Bank of Washington $2,325, or the notes were renewals of older obligations.

14. The defendants Riggs and Co., bankers, are preferred creditors to the amount of $2,025. This aggregate, according to the deed of assignment, is made up as follows:

The first preference, being the 15th of the preferences, is a note for $250, dated June 10th, 1886, endorsed by E. Hollander.

Second, being the 18th of the preferences, note for $300, dated May 12th, 1886, endorsed by Theodore Hollander to Riggs and Co.

Third, being the 32nd preference, note for $250 of Justus Hollander, payable to Julius Lansburgh and endorsed by him.

Fourth, being the 34th preference, note of Justus Hollander for $250, dated June 3rd, 1886, and endorsed by E. Hollander.

Fifth, being the 42nd preference, note of A. Kaufman for $175, dated June 9th, 1886, payable to Justus Hollander and endorsed by him.

Sixth, being the 64th preference, note of Justus Hollander to the Daily Post Publishing Company for $200, dated March 10th, 1886, endorsed by the Post Publishing Company.

The first five items, making an aggregate of $1,800, all purport to be for money obtained of Riggs and Co. between the 12th of May and the 10th of June, 1886, ranging from five to thirty-three days before assignment.

Upon each of these notes, including the sixth, Riggs and Co. have a responsible endorser or endorsers.

15th. The National Metropolitan bank is the seventh preferred creditor upon a note for $200, dated May 4th, 1886, endorsed by Theodore Hollander. If this was an original transaction and *bona fide* this money was obtained 41 days before the assignment.

15 16th. The assignment shows an aggregate indebtedness to the National Bank of Washington, Riggs and Co., and the National Metropolitan bank of $4,550, all created, according to the date of assignment, within 40 days and some of it within five days prior to the assignment.

These large sums of money, if borrowed at the dates which appear in the assignment, were obtained when the defendant Justus Hollander not only knew that he was hopelessly insolvent, but when his entire assets would not have paid more than thirty-three and one-third per cent. upon his indebtedness, if that.

About the time these moneys were being received, according to the deed of assignment, one of the members of the plaintiffs' firm made several visits to the defendant Justus Hollander for the purpose of getting some payment or security or satisfaction in some way from him as to his large indebtedness to the plaintiffs, but could obtain neither money, security, nor satisfaction, and the plaintiffs upon information and belief state that for some months before his assignment the said Justus Hollander paid little or nothing upon his large indebtedness.

The plaintiffs charge that if these moneys were obtained from the banks, according to the showing of the assignment, they were fraudulently concealed by the said Justus Hollander from his creditors.

17th. The endorsers upon all these notes to the banks, as well as upon the Travers notes, are, as the plaintiffs are informed, the brothers of the said Justus Hollander and other relations. The plaintiffs believe, and therefore charge, that these persons were intimate with the said Justus, and that they knew or had reason to know that he was insolvent, and that he was defrauding the plaintiffs and other dealers from whom he was purchasing goods, without the intention of paying for them or the ability to do so.

18th. The plaintiffs say that if the notes which purport to have been discounted by the banks, hereinbefore referred to, were renewals of antecedent debts, as they probably were, the holders

16 thereof, having given no value for said assignment, occupy no better position than the fraudulent purchaser, and the plaintiffs are in law and equity entitled to have said deed of assignment set aside as fraudulent and void as to them.

19th. The defendant Julius Lansburgh is preferred in the 62nd preference to the amount of $518.98, according to the deed upon a note endorsed by said Lansburgh May 10th, 1886, and discounted at Riggs and Co.'s bank.

The plaintiffs charge that if this note is *bona fide* it is a renewal of an antecedent indebtedness.

The said Lansburgh is also preferred in the 63d preference for $1,000 upon ten notes dated December 8th, 1883, each for $100, payable to the order of Henry Franc.

This preference is void as against the plaintiffs, being to secure an antecedent indebtedness and without any new consideration.

20th. The 60th preference is to Louis Heller for borrowed money, according to the deed. Plaintiffs charge that if *bona fide* it is for an

old debt and is void as against plaintiffs because no value was given for the assignment. It is also void for uncertainty.

21st. The 64th, 65th, and 66th preferences seem to be for notes recently given to newspaper companies, and plaintiffs believe and charge that these notes were given upon settlements for advertising running a long way back; that they are for antecedent indebtedness without any new consideration, and the preferences are void as against plaintiffs for the reasons hereinbefore indicated.

22nd. The 67th and 68th preferences are to W. H. Slater for 2 notes, one dated May 7th, 1886, for $200, and the other May 11th, 1886, for $200. There is no indication as to what they are for. If *bona fide*, the plaintiffs charge that they are for an antecedent indebtedness and are void as against the plaintiffs.

23rd. By the said deed the trustee in the execution thereof was authorized and empowered to appoint one or more attorneys
17 under him and at his pleasure revoke the same, and the plaintiffs say because of this power of delegating the trusts of said deed to be executed by attorneys to be appointed by the said assignee the said deed is void.

24th. The plaintiffs say that the defendants Elias Travers, The National Bank of Washington, Riggs and Co., and The National Metropolitan Bank, who are preferred creditors, have each sureties upon the notes held by them, upon the faith of whose responsibility they made their loans to the defendant Justus Hollander, and these sureties are, as plaintiffs believe and charge, good for the several amounts for which they are liable, and they are all, as the plaintiffs are informed, the near relations of the said Justus, and the said creditors named in equity, if the said deed of assignment should be held to be valid, should be required to first exhaust the sureties before coming upon the assigned property, at least as against the stronger equities of these plaintiffs.

25th. The said defendant, Samuel Bieber, immediately after the execution of said deed of assignment, took possession of said store and the stock of goods therein and has ever since, with the assistance of the said Justus Hollander and others, been engaged in selling the goods at retail. Plaintiffs are advised that it is the intention of the said assignee to apply the proceeds of the sales of said goods to the discharge of the preferred debts in the order of the preferences in said deed. Whether he has as yet made any payments thereon plaintiffs are not advised, but if he has not already done so he doubtlessly will unless prevented by the order of this honorable court.

The assignee, as plaintiffs are advised, gave no bond, and whether he is responsible or not—as to which plaintiffs have no knowledge—such trusts should not be administered without bond and under the supervision of the court of equity.

26th. The plaintiffs are informed and believe and so charge that the said Samuel Bieber, the assignee, is largely engaged in
18 business as a clothing merchant on his own account, and that he has much other business of his own and is able to give but little time and attention to the business of this trust, and

that it is practically left to the management of the said Justus Hollander and the same clerical force which was employed by the said Justus before his assignment. Moreover, the said assignee, in all legal matters pertaining to the administration of said trust, is advised by the attorney of the said Hollander, and the plaintiffs charge that the whole business is being conducted in the interest and for the benefit of the said Justus Hollander and his relations, who are his sureties.

The plaintiffs therefore pray that process of subpœna may issue to the defendants, Justus Hollander, Samuel Bieber, Willie Hollander, Julius Lansburgh, Elias Travers, James Hollander, The National Bank of Washington, The National Metropolitan Bank, Theodore Hollander, Charles Baum, A. Kaufman, The Daily Post Publishing Company, The National Republican Company, The Evening Critic Publishing Company, William H. Slater, Edward Hollander, and John Elliott, Charles C. Glover, Thomas Hyde, E. Francis Riggs, Thomas L. Riggs, and Alexander Elliott, partners, doing business under the firm name of Riggs and Co., requiring them to appear and severally answer the allegations of this bill.

That the said defendant, Justus Hollander, may be required to make full, true, and perfect answers without oath to the following enquiries:

1. Give the true amount of his indebtedness to each one of his preferred creditors, going back to the origin of the transaction and stating what it was for; if there have been any renewals and payments, give the dates and amounts of each payments and for what amount the renewals were.

2. The amount of goods purchased by him in the spring of 1886, the names of the persons or firms from whom purchased, and the date and amount of each purchase.

3. The amount of his indebtedness and the names and
19 amounts due to each of his creditors on the 1st of February, 1886, before making his purchases in the spring of 1886.

4. What was the amount and character of goods he had in his store prior to the first of March, 1886, and what was the market value of his stock at that time, before making his spring purchases?

5. Furnish a list of his unpreferred creditors, with a statement of the amount due to each, what it is for and when it originated, and what payments have been made on account, with the dates.

6. What payments on account of goods purchased he made between the 1st of February and the 13th of June, 1886, and what payments on any other account whatever between same dates and the amounts and dates of each of said payments, item by item.

7. Whether he received from the National Bank of Washington, Riggs and Co., the National Metropolitan bank, Elias Travers, W. H. Slater, or Louis Heller or from either of them any money on any of the notes set — in the deed of assignment after the first day of February, 1886. If he did, let him state particularly the amount, date, and from which bank or person named, and what he did with the money thus received.

8. Furnish a statement of his daily sales between the first of February and the 15th of June, 1886.

9. How are the defendants Willie Hollander, James Hollander, Theodore Hollander, Edward Hollander, Charles Baum, A. Kaufman, and Julius Lansburgh related to him.

10. That defendant- Elias Travers, The National Bank of Washington, Riggis and Co., The National Metropolitan Bank, Julius Lansburgh, The National Republican Company, The Evening Critic Company, The Daily Washington Post Company, William H. Slater, and Louis Heller may severally answer under oath, giving the origin of the several indebtednesses to them, what it is for; if renewed, the dates and amounts for which renewed.

11. That the said Samuel Bieber may answer on oath,
20 stating fully what property came into his hands by virtue of said assignment, what he has done with it, how much he has converted into money, what he has done with the money, whom he has in his employ as assistants or clerks or salesmen, what he pays to each for his services, whether they or any of them were employés of Justus Hollander before his assignment, the names of such as were so employed, what arrangement or contract he has with the defendant Justus Hollander for assisting him, what disbursement he has made as assignee on any account whatever, what moneys he has received as such assignee, and from what sources.

12. That a receiver may be appointed by this honorable court to take possession of all the goods and property remaining in the hands of the said assignee unsold and of all the money, notes, and accounts in his hands belonging to said trust; that the said receiver shall proceed to convert the said goods into money under the order of this court; that an account may be taken of how much is due the plaintiffs from the defendant Justus Hollander upon the several demands, as hereinbefore set out, with interest and costs; that upon the final hearing hereof the said deed of assignment shall be declared to be fraudulent and void as against these plaintiffs, and that it may be decreed to be set aside and canceled, and that out of the proceeds of the sales of the goods in the hands of the receiver, if a receiver shall be appointed, and if not out of the moneys in the hands of the assignee, the amount so found to be due the plaintiffs may be ordered to be paid, with interest and costs, and that until the further order of the court the said defendant Bieber be restrained from making any further sales of the goods or from paying out any of the moneys in his hands to the preferred creditors or for any other purpose or upon any other account whatever, and for such other and further relief as may be necessary.

FECHHEIMER, GOODKIND AND CO.

S. S. HENKLE,
Solicitor for Plaintiffs.

21 STATE OF NEW YORK, }
City and County of New York, } ss:

I do solemnly swear that I have read this bill subscribed by Fechheimer, Goodkind and Co. and know the contents thereof, and that

the facts therein stated upon the personal knowledge of the plaintiffs *is* true, and those stated upon information and belief I believe to be true, and that I am a member of the firm of Fechheimer, Goodkind, & C-., plaintiffs in the foregoing bill.

HENRY GOODKIND.

Subscribed and sworn to before me this 26th day of July, 1886.

[SEAL.] WM. H. RIBLET,
Notary Public, 16, *City and County of New York*,
3d Avenue, Corner 9th.

EXHIBIT (A) TO THE BILL.

Filed July 28, 1886.

Short copy.

Clerk's office, supreme court of the District of Columbia.

FECHHEIMER, GOODKIND AND CO. *vs.* JUSTUS HOLLANDER. } No. 26977, Docket —.

1886, July 9. Judgment for pl'ffs for..... $1,000 00
Interest on same at 7 per cent. from Febr'y 15, 1886, until paid and costs of suit .. 21 10

1886, July 16. *Fi. fa.* issued; ret'd July 24, 1886, *nulla bona.*

Test:
[SEAL.] R. J. MEIGS, *Clerk*,
By J. R. YOUNG,
Assistant Clerk.

July 24, 1886.

22 EXHIBIT (B) TO THE BILL.

Filed July 28, 1886.

Copy.

Liber No. 1186, folio 222 *et seq.*

Justus Hollander to Samuel Bieber. } Recorded June 15, 1886, 9.20 a. m. Assignment.

This indenture, made this fifteenth (15) day of June, A. D. 1886, by and between Justus Hollander, of the city of Washington in the District of Columbia of the first part, and Samuel Bieber, of the same place of the second part.

Whereas said Hollander stands and is indebted to various persons in divers sums of money, which by reason of losses and misfortunes in business, he has become unable fully to pay and discharge, and is desirous of providing for the payment thereof by and

assignment of all his property, effects, rights and interest for that purpose.

Now therefore, this indenture witnesseth, that the said party of the first part, for and in consideration of the premises and the sum of five (5) dollars, to him in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained sold, aliened, enfeoffed, released conveyed, assigned, transferred and set over, and doth by these presents grant, bargain, sell, alien, enfeoff, release, convey, assign, transfer and set over, to said party of the second part, his heirs, executors, administrators and assigns all and singular the lands, tenements and hereditaments, real estate and chattels, real and all the goods, wares, merchandize, personal property, chattels and effects, belonging to said party of the first part, whether in possession or action and all rights of action, cause of action and all estates and interests whatsoever, whether real, personal or mixed, and all debts, sums of money, balances of account, promissory notes, bills of exchange, drafts, bonds,
23 judgments, claims and demands and other securities now belonging, due or to become due or payable to the said party of the first part, including herein all the stock in trade, fixtures and paraphernalia, now in and upon premises known as No. 1217 Pennsylvania avenue, northwest in said city, known as the Excelsior clothing-house, the said stock consisting of gentlemen'- furnishing goods, clothing, satchels, hats and capes, excepting nevertheless such property as is by law exempt from execution.

To have and to hold the same and every part and parcel thereof unto the said party of the second part, his heirs, executors, administrators and assigns, to his and their sole use, benefit and behoof forever.

In trust, nevertheless, for the uses trusts and purposes following, and none other, that is to say.

First. To take possession of said property hereby assigned and to sell and dispose of the same with all reasonable diligence either at public or private sale, for the best interests of all parties concerned and for the best prices that can be obtained therefor, and to convert the same into money, and to collect all such debts, claims demands and interests as may be collectable, and with and out of the proceeds of such sales and collections;

Second. To pay and discharge all the just and reasonable expenses, costs and charges of carry- into effect the trusts hereby created, together with a reasonable commission or compensation, not exceeding ten (10) per centum of said gross sales and collections to said party of the second part, for his services in executing said trust, and out of the residue of the proceeds of sales and collections:

Third. To pay and discharge in full with such interest as may be due thereon, all and singular the debts owing from the said party of the first part, to the following-named persons, in the order following that is to say.

To pay first in full to Willie Hollander the sum of two hundred and ninety-three $\frac{83}{100}$ ($293.83) dollars due him for goods
24 sold and delivered by him to said party of the first part.

To pay second in full to James Hollander the sum of five hundred and sixty-four $\frac{40}{100}$ ($564.40) dollars due him from said party of the first part for services rendered, cash loaned and stock sold by him to said party of the first part.

To pay third, in full to Julius Lansburgh, or to the legal holder or holders thereof, the amount of the note of said party of the first part for forty-seven $\frac{50}{100}$ ($47.50) dollars, dated May fifteenth (15th) 1886 and payable in one month after date to the order of said Lansburgh at the Second National bank with seven (7 %) per cent. interest.

To pay fourth in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred ($100.00) dollars, dated December nineteenth (19th) 1885 and payable to the order of James Hollander in six (6) months after date with eight (8 %) per cent. interest till paid and by said James Hollander endorsed.

To pay fifth in full to Elias Travers or to the legal holder or holders thereof, the amount of the note of said party of the first part for one hundred ($100.00) dollars, dated November twenty-seventh (27th) 1885 and payable to order of Theodore Hollander in seven (7) months after date with eight (8 %) per cent. interest until paid and by said Theodore Hollander endorsed.

To pay sixth in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for two hundred ($200.00) dollars dated August twenty-eighth (28th) 1885 and payable to the order of Theodore Hollander in ten (10) months after date with (8 %) per cent. interest till paid and by said Theodore Hollander endorsed.

To pay seventh in full to the National Metropolitan bank or to the legal holder or holders thereof the amount of the note of said party of the first part for two hundred ($200.00) dollars dated May fourth (4th) 1886 and payable in sixty (60) days after date to the order of Theodore Hollander with seven (7 %) per cent. interest till paid at Riggs and Co. and by the said Theodore Hollander endorsed.

To pay eighth in full to Elias Travers, or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred ($100.00) dollars dated February twelfth (12th) 1886, and payable to the order of Theodore Hollander in five (5) months after date with (8 %) per cent. interest till paid and by said Theodore Hollander endorsed.

To pay ninth in full to Elias Travers or to the legal holder or holders thereof, the amount of the note of said party of the first part for two hundred ($200.00) dollars dated October fourteenth (14th) 1885 and payable to the order of Theodore Hollander in nine (9) months after date with eight (8 %) per cent. interest till paid and by said Theodore Hollander endorsed.

To pay tenth in full to Elias Travers, or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred (100.00) dollars dated January fifteenth (15th) 1886 and payable to the order of Theodore Hollander in six (6) months after

date with eight (8 %) per cent. interest till paid and by said Theodore Hollander endorsed.

To pay eleventh in full to Elias Travers, or to the legal holder or holders the amount of the note of said party of the first part for one hundred ($100.00) dollars dated December nineteenth (19th) 1885 and payable to the order of James Hollander in seven (7) months after date with eight (8 %) per cent. interest till paid and by said James Hollander endorsed.

To pay twelfth in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred ($100.00) dollars dated February nineteenth (19th) 1886 and payable to the order of Theodore Hollander in five (5) months after date with eight (8 %) per cent. interest till paid and by said Theodore Hollander endorsed.

26 To pay thirteenth in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred ($100.00) dollars, dated March twenty-sixth (26th) 1886 and payable to the order of Theodore Hollander in four (4) months after date with eight (8 %) per cent. interest till paid and by said Theodore Hollander endorsed.

To pay fourteenth in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part, for two hundred ($200) dollars dated November twenty-seventh (27th) 1885 and payable to the order of Theodore Hollander in eight (8) months after date with eight (8 %) per cent. interest and by said Hollander endorsed.

To pay fifteenth in full to Messrs. Riggs and Company or to the legal holder or holders thereof the amount of the note of said party of the first part for two hundred and fifty ($250.00) dollars dated June tenth (10th) 1886, and payable to the order of E. Hollander in sixty (60) days after date with seven (7 %) per cent. interest until paid at "Riggs and Co." and by said E. Hollander endorsed.

To pay sixteenth in full to the National Bank of Washington or to the legal holder or holders thereof the amount of a note for three hundred ($300.00) dollars dated May sixth (6) 1886 drawn by Charles Baum for the accommodation of said party of the first part payable to the order of said Justus Hollander three (3) months after date with seven (7 %) per cent. interest till paid at National Bank of Washington, and by said Justus Hollander and Hollander Bros. in liquidation endorsed. The said note having been negotiated by said party of the first part for his own use and sole benefit.

To pay seventeenth in full to the National Bank of Washington or to the legal holder or holders thereof the amount of a note drawn by A. Kaufman for the accommodation of said party of the first part for one hundred ($100.00) dollars dated May twenty-sixth (26th) 1886 and payable to the order of said party of the first part in two months after date, the said note having been negotiated by said party of the first part for his own and sole benefit.

27 To pay eighteenth in full to Messrs. Riggs and Co. or to the legal holder or holders, the amount of the note of said party of the first part for three hundred ($300.00) dollars dated May

twelfth (12th) 1886 and payable to the order of Theodore Hollander in three (3) months after date at Riggs and Co. and with seven (7%) per cent. interest till paid and by said Theodore Hollander endorsed.

To pay nineteenth in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred ($100.00) dollars dated February twelfth (12th) 1886 and payable in six (6) months after date to order of Theodore Hollander with eight (8%) per cent. interest till paid and by him endorsed.

To pay twentieth in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for two hundred ($200.00) dollars dated October fourteenth (14th) 1885 and payable to the order of Theodore Hollander in ten (10) months after date with eight (8%) per cent. interest till paid and by him endorsed.

To pay twenty-first in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred ($100.00) dollars, dated January fifteenth (15) 1886, and payable to the order of Theodore Hollander in seven (7) months after date with eight (8%) per cent. interest till paid and by said Theodore Hollander endorsed.

To pay twenty-second in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred ($100.00) dollars dated February nineteenth (19th) 1886 and payable to the order of Theodore Hollander in six (6) months after date with eight (8%) per cent. interest till paid and by said Theodore Hollander endorsed.

To pay twenty-third in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred ($100.00) dollars dated March 26 1886
28 and payable to the order of Theodore Hollander in five (5) months after date with eight (8%) per cent. interest till paid and by said Theodore Hollander endorsed.

To pay twenty-fourth in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for two hundred ($200.00) dollars dated November twenty-seventh (27th) 1885 and payable to the order of Theodore Hollander in nine (9) months after date with eight (8%) per cent. interest till paid and by said Theodore Hollander endorsed.

To pay twenty-fifth in full to Messrs. Riggs and Company or to the legal holder or holders thereof the amount of the promissory note of said party of the first part for three hundred and twenty-five ($325.00) dollars dated June eleventh (11th) 1886 and payable to the order of E. Hollander in sixty (60) days after date with seven (7%) per cent. interest till paid at Riggs and Co. and by said E. Hollander endorsed.

To pay twenty-sixth (26th) in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred ($100.00) dollars, dated February twelfth (12th) 1886 and payable to the order of Theodore Hollander

in seven (7) months after date with eight (8 %) per cent. interest till paid and by him endorsed.

To pay twenty-seventh in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred $\frac{00}{100}$ ($100.00) dollars, dated May twelfth (12th) 1886 and payable to the order of Theodore *of Theodore* Hollander in four months after date with eight (8 %) per cent. interest till paid, and by him endorsed.

To pay twenty-eighth in full to Elias Travers or to the legal holder or holders thereof, the amount of the note of said party of the first part for two hundred ($200.00) dollars dated January fifteenth (15th) 1886, and payable to the order of Theodore Hollander in eight (8) months after date with eight (8 %) per cent. interest till paid and by said Theodore Hollander endorsed.

29 To pay twenty-ninth in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred ($100.00) dollars dated February nineteenth (19th) 1886 and payable to the order of Theodore Hollander in seven (7) months after date with eight (8 %) per cent. interest till paid and by him endorsed.

To pay thirtieth in full to Elias Travers, or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred ($100.00) dollars dated March twenty-sixth (26th) 1886, and payable to the order of Theodore Hollander in six (6) months after date with eight (8 %) per cent. interest till paid and by him endorsed.

To pay thirty-first in full to Elias Travers or to the legal holder or holders the amount of the note of said party of the first part for two hundred ($200.00) dollars dated November twenty-seventh (27th) 1885 and payable to the order of Theodore Hollander in ten (10) months after date with eight (8 %) per cent. interest till paid and by him endorsed.

To pay thirty-second in full to Messrs. Riggs and Company or to the legal holder or holders thereof, the amount of the note of said party of the first part for two hundred and fifty $\frac{00}{100}$ ($250.00) dollars, dated May twenty-seventh (27th) 1886 and payable to the order of Julius Lansburgh in ninety (90) days after date at Riggs and Co. with seven (7 %) per cent. interest till paid and by said Lansburgh endorsed.

To pay thirty-third in full to the National Bank of Washington or to the legal holder or holders thereof the amount of the note for four hundred and seventy-five ($475.00) dollars dated May (12th) twelfth 1886 and drawn by Charles Baum for the accommodation of said party of the first part, payable to the order of said Justus Hollander in three (3) months after date at said National Bank of Washington with seven (7 %) per cent. interest till paid and by said Justus Hollander negotiated for his own and sole account.

30 To pay thirty-fourth in full to Messrs. Riggs and Company or to the legal holder or holders thereof the amount of the note of said party of the first part for two hundred and fifty ($250.00) dollars, dated June third (3rd) 1886 and payable to the order of E.

Hollander in ninety (90) days after date with seven (7%) per cent. interest till paid at Riggs and Co. and by said E. Hollander endorsed.

To pay thirty-fifth in full to the National Bank of Washington or to the legal holder or holders thereof the amount of a certain note for six hundred and twenty-five ($625.00) dollars dated May 20th 1886 drawn by Theodore Hollander payable to the order of Charles Baum in three (3) months after date with seven (7 %) per cent. interest till paid at the National Metropolitan bank and by said Justus Hollander endorsed: the said note having been drawn and endorsed by the said Theodore Hollander and Charles Baum for the accommodation of said party of the first part for his own and sole benefit.

To pay thirty-sixth in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred ($100.00) dollars, dated June seventh (7th) 1886 and payable to the order of Theodore Hollander in four (4) months after date with eight (8 %) per cent. interest till paid and by him endorsed.

To pay thirty-seventh in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred ($100.00) dollars, dated May twelfth (12th) 1886 and payable to the order of Theodore Hollander in five (5) months after date with eight (8 %) per cent. interest till paid and by him endorsed.

To pay thirty-eighth in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for two hundred ($200.00) dollars dated February twelfth (12th) 1886 and payable to the order of Theodore Hollander in eight months after date with eight (8 %) per cent. interest till paid
31 and by him endorsed.

To pay thirty-ninth in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for two hundred ($200.00) dollars dated January fifteenth (15th) 1886 and payable to the order of Theodore Hollander in nine (9) months after date with eight (8 %) per cent. interest till paid and by him endorsed.

To pay fortieth in full to Elias Travers or to the legal holder or holders thereof, the amount of the note of said party of the first part for two hundred ($200) dollars dated February nineteenth (19th) 1886 and payable to the order of Theodore Hollander in eight (8) months after date with eight (8 %) per cent. interest till paid and by him endorsed.

To pay forty-first in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred ($100.00) dollars, dated March twenty-sixth (26th) 1886 and payable to the order of Theodore Hollander in seven (7) months after date with eight (8 %) per cent. interest till paid and by him endorsed.

To pay forty-second in full to Messrs. Riggs and Company or to the legal holder or holders thereof the amount of the note of A. Kaufman for one hundred and seventy-five ($175.00) dollars dated

June ninth (9) 1886 and payable to the order of said party of the first part, in ninety (90) days after date with seven (7 %) per cent. interest till paid at Second National bank, the same having been drawn by said Kaufman for the accommodation of said party of the first part and by him negotiated for his own and sole benefit.

To pay forty-third in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred ($100.00) dollars dated June seventh (7th) 1886, and payable to the order of Theodore Hollander in five (5) months after date with eight (8 %) per cent. interest till paid,
32 and by him endorsed.

To pay forty-fourth in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred ($100.00) dollars dated May twelfth (12th) 1886 and payable to order of Theodore Hollander in six (6) months after date with eight (8 %) per cent. interest till paid and by him endorsed.

To pay forty-fifth in full to Elias Travers or to the legal holder or holders the amount of the note of said party of the first part for two hundred ($200.00) dollars dated February twelfth (12th) 1886 and payable to the order of Theodore Hollander in nine (9) months after date with eight (8 %) per cent. *till paid interest* and by him endorsed.

To pay forty-sixth in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for two hundred ($200.00) dollars dated January fifteenth (15th) 1886 and payable to the order of Theodore Hollander in ten (10) months after date with (8 %) per cent. interest till paid and by him endorsed.

To pay forty-seventh to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for two hundred ($200.00) dollars dated February nineteenth (19th) 1886 and payable to the order of Theodore Hollander in nine (9) months after date with eight (8 %) per cent. interest till paid and by him endorsed.

To pay forty-eighth in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for two hundred ($200.00) dollars dated March twenty-sixth (26th) 1866 and payable to the order of Theodore Hollander in eight (8) months after date with eight (8 %) per cent. interest till paid and by him endorsed.

To pay forty-ninth in full to Messrs. Riggs and Company or to the legal holder or holders thereof the amount of the note
33 of said party of the first part, for four hundred and seventy-five ($475.00) dollars dated May twenty seventh (27th) 1886 and payable to the order of Charles Baum in ninety (90) days after date with seven (7 %) per cent. interest till paid at Riggs and Co.

To pay fiftieth in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred ($100.00) dollars, dated June seventh (7th) 1886 and payable to the order of Theodore Hollander in six (6) months

after date with eight (8 %) per cent. interest till paid and by him endorsed.

To pay fifty-first in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for two hundred ($200.00) dollars, dated May twelfth (12th) 1886 and payable to the order of Theodore Hollander in seven (7) months after date with eight (8 %) per cent. interest till paid, and by him endorsed.

To pay fifty-second in full to Elias Travers or to the legal holder or holders thereof, the amount of the note of said party of the first part for two hundred ($200.00) dollars dated February twelfth (12th) 1886 and payable to the order of Theodore Hollander in ten (10) months after date with eight (8 %) per cent. interest till paid and by him endorsed.

To pay fifty-third in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for two hundred ($200.00) dollars dated February nineteenth (19th) 1886 and payable to the order of Theodore Hollander in ten (10) months after date with eight (8 %) per cent. interest till paid and by him endorsed.

To pay fifty-fourth in full to Elias Travers or to the legal holder or holders thereof, the amount of the note of said party of the first part for two hundred ($200.00) dollars, dated March twenty-sixth (26th) 1886, and payable to the order of Theodore Hollander
34 in nine (9) months after date with eight (8 %) per cent. interest till paid and by him endorsed.

To pay fifty-fifth in full to National Bank of Washington or to the legal holder or holders thereof the amount of the certain note for eight hundred and twenty-five ($825.00) dollars dated June tenth (10th) 1886 and drawn by E. Hollander payable to the order of Charles Baum in three (3) months after date at National Bank of Washington with seven (7 %) per cent. interest till paid and by said party of the first part endorsed, the same having been drawn and endorsed by said E. Hollander and Charles Baum for the accommodation of said party of the first part, and by him negotiated for his own and sole accommodation.

To pay fifty-sixth in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred ($100.00) dollars, dated June seventh (7th) 1886, and payable to the order of Theodore Hollander in seven (7) months after date, with eight (8 %) per cent. interest till paid and by him endorsed.

To pay fifty-seventh in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for three hundred ($300.00) dollars, dated May twelfth (12th) 1886 and payable to the order of Theodore Hollander in eight (8) months after date with eight (8 %) per cent. interest till paid, and by him endorsed.

To pay fifty-eighth in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for two hundred ($200.00) dollars, dated March (26th) twenty

sixth 1886 and payable to the order of Theodore Hollander in ten (10) months after date with eight (8 %) per cent. interest till paid and by him endorsed.

To pay fifty-ninth in full to Elias Travers or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred ($100.00) dollars, dated June seventh
35 (7th) 1886, and payable to the order of Theodore Hollander in eight (8) months after date with eight (8 %) per cent. interest till paid, and by him endorsed.

To pay sixtieth in full to Louis Heller, the sum of one hundred dollars ($100.00) due him for money loaned by him to said party of the first part.

To pay sixty-first in full to Elias Travers or to the legal holder or holders thereof the amount or balance due on the promissory note of said party of the first part for one thousand ($1,000.00) dollars dated November ninth (9th) 1885 and payable to the order of James Hollander in one (1) year after date, and by him endorsed, the said note to be repaid in weekly instalments of twenty ($20.00) dollars and on which there is yet due the sum of three hundred and eighty ($380.00) dollars.

To pay sixty-second in full to Julius Lansburgh or to the legal holder or holders thereof the amount of the note of said party of the first part for five hundred and eighteen $\frac{98}{100}$ ($518.98) dollars dated May tenth (10th) 1886 and payable to the order of said Julius Lansburgh in sixty (60) days after date at Riggs and Co. with six (6 %) per cent. interest till paid.

To pay sixty-third to Julius Lansburgh or to the legal holder or holders thereof the sum of one thousand ($1,000) dollars upon the ten (10) promissory note- of said party of the first part, dated December eighth (8th) 1883 each, being for the sum of one hundred ($100.00) dollars and payable to the order of Henry Franc in respectively thirty-one (31) thirty-two (32) thirty-three (33) thirty-four (34) thirty-five (35) thirty-six (36) thirty-seven (37) thirty-eight (38) thirty-nine (39) and forty (40) months after date with ten (10 %) interest and by said Franc endorsed.

To pay sixty-fourth in full to the Daily Post Publishing Company or to the legal holder or holders thereof the amount of a cer-
note of said party of the first part for two hundred ($200.00)
36 dollars dated March tenth (10th) 1886 and payable to the order of said "Daily Post Publishing Company" in three (3) months after date at Riggs and Co.

To pay sixty-fifth in full to the National Republican Company or to the legal holder or holders thereof the amount of the note of said party of the first part for one hundred and sixty ($160.00) dollars dated April fourteenth (14th) 1886 and payable to the order of said National Republican Company in three (3) months after date.

To pay sixty-six to the Evening Critic Publishing Company or to the legal holder or holders thereof, the amount of the note of said party of the first part for one hundred and thirty ($130.00) dollars dated April fifteenth (15th) 1886 and payable to the order

of said Evening Critic Publishing Company in three (3) months after date.

To pay sixty-seventh in full to W. H. Slater or to the legal holder or holders thereof the amount due upon the note of said party of the first part for two hundred ($200.00) dollars dated May seventh (7th) 1886, and payable to the order of said Slater in thirty (30) days after date.

To pay sixty-eighth in full to W. H. Slater or to the legal holder or holders thereof the amount of the note of said party of the first part for two hundred ($200.00) dollars dated May eleventh (11th) 1886, and payable to the order of said Slater in thirty (30) days after date.

And if after paying all costs, charges and expen- attendant upon the execution of this trust and after payment of the debt hereinbefore mentioned there be any residue or surplus of monies remaining, then the said party of the second part shall distribute the said monies among all the other creditors of the said party of the first part, paying their claims and demands in full and if there be not sufficient of said proceeds and monies to pay the same in full then he shall apply the same *pro rata* so far as they will extend, to the payment of the said claims and demands, according to their
37 respective amounts.

And lastly if there be any surplus after the payment of all said costs, claims, demands and all the indebtedness of said party of the first part to pay the same over to said party of the first part, his executors, administrators and assigns.

And for the better and more effectual execution of these presents, and of the trusts hereby created and reposed the said party of the first part doth hereby make, constitute and appoint said party of the second part his true and lawful attorney irrevocable with full power and authority to do, transact and perform all acts, deeds, matters and things which may be necessary in the premises, and to the full execution of said trust and for the purposes thereof to ask, demand, recover and receive by process of law or otherwise of and from all persons whomsoever, all the interests, estates, debts and demands, real and personal property, hereby conveyed and assigned, and to give acquittances and discharges for the same, and to sue, prosecute, defend and implead for, and to execute, acknowledge and deliver all necessary deeds and instruments of conveyance and also for the purposes aforesaid or any part thereof to make, constitute and appoint one or more attorneys under him and at his pleasure revoke the same, hereby ratifying and confirming whatever the said party of the second part shall lawfully do in the premises.

And the said party of the second part doth hereby accept the trust, in him by these presents reposed and doth for himself, his heirs, executors and administrators hereby covenant and agree to and with the said party of the first part, that he the said party of the second part will honestly and faithfully and without delay executed the same according to the best of his skill, knowledge and ability.

In testimony whereof the said parties have hereunto set their

respective hands and seals the day and year first hereinbefore written.

JUSTUS HOLLANDER. [SEAL.]
SAMUEL BIEBER. [SEAL.]

Signed, sealed, and delivered in presence of—
CHARLES WALTER.

38 DISTRICT OF COLUMBIA, *ss:*

I, Charles Walter, a notary public in and for the District aforesaid, do hereby certify that Justus Hollander and Samuel Bieber, parties to a certain deed of assignment bearing date the fifteenth (15) day of June, A. D. 1886, and hereto annexed, personally appeared before me, in the District aforesaid, the said Justus Hollander and Samuel Bieber being personally well known to me to be the persons who executed the said deed of assignment, and acknowledged the same to be their act and deed.

Given under my hand and notarial seal the fifteenth (15) day of June, A. D. 1886.

[NOTARIAL SEAL.] CHARLES WALTER,
Notary Public.

Endorsed.

This is to certify that the within is a true and verified copy of a deed as recorded in No. 1186, folio 222 *et seq.*, one of the land records for the District of Columbia.

Washington, D. C., July 21, 1886.

[SEAL.] GEO. F. SCHAYER,
Dep. Recorder.

EXHIBIT (C) TO THE BILL.

Filed July 28, 1886.

WASHINGTON, D. C., *June* 25, 1886.

GENTLEMEN: I herewith present my first report as assignee of Justus Hollander, of No. 1217 Penna. Ave. N. W., this city.

Total indebtedness	$39,020 93

Preferred debts as follows:

Elias Travers	$6,380 00
Nat. Bank of Washington	2,325 00
Riggs and Co	2,025 00
39 Nat. Met. bank	200 00
Willie Hollander	293 83
Jas. Hollander	564 40
Nat'l Republican	160 00
Julius Lansburgh	1,566 48
Evening Critic	130 00
Washington Post	200 00
W. H. Slater	400 00
Lewis Heller	100 00
	$14,744 71

Assets.

Stock appraised at	$17,505 33
Fixtures appraised at	263 00
Book accounts, $713.05, worth about	300 00
	$18,157 33

Respectfully submitted.

SAMUEL BIEBER, *Assignee.*

EXHIBIT (D) TO THE BILL.

Filed July 28, 1886.

$1,000. WASHINGTON, D. C., *February* 15, 1886.

Four months after date I promise to pay to the order of Fechheimer, Goodkind and Co. ten hundred dollars at Riggs and Co., with interest at 7% per annum until paid.

Value received.

(Signed) JUSTUS HOLLANDER.

No. —. Due June 18.

40 EXHIBIT (E) TO THE BILL.

Filed July 28, 1886.

Martin S. Fechheimer, Henry Goodkind, New York.

Henry Kronthal, Chas. E. Adler, Chas. Fishel, San Francisco.

All claims must be made within 10 days after receipt of goods.

NEW YORK, ——, 188–.

Mr. Justus Hollander, Washington, D. C., bought of Fechheimer, Goodkind and Co., wholesale clothiers, 746 to 750 Broadway, cor. Astor Place, and 16 and 18 Sansome St., San Francisco.

Terms: Payable in New York exchange.

April 3, 1886.	342	6 suits, 16.50	99	
	2232	6 " 14.50	87	
	500			
	2214	8 " 18.50	1	48
	2204	12 pants, 3.50	42	
	432¼	6 coats, 5.50	33	
	531	4 pants, 6	24	
	2203	8 " 3.50	28	
	441	8 " 4.50	36	
	593	4 " 5.50	22	
	2224	4 " 5.50	22	
	273	4 " 5.50	22	

	2125	7 suits, 14.50		101 50
	606	6 " 12		72
	2145	3 " 12		36
	2200	3 " 12		36
	589	6 " 17.50		105
	464¼	6 " 13.50		81
	628	6 " 12		72
41				
April 3, 1886.	605	6 suits, 13.50		81
	601	6 " 12		72
	592	6 " 10		60
	258¼	6 " 12		72
	384¼	6 " 10		60
	541	6 " 9		54
				1,465 50
		Forward		1,465 50
		Am't forward		1,465 50
April 7, '86.	257	6 suits, 14	84	
	324	6 " 14	84	
	2326	6 c'ts and vests, 18	108	
			——	276
April 15, '86.	457	6 suits, 17.50		105
				1,846 50

Spa. to Answer Original Bill.

Issued July 28, 1886.

In the Supreme Court of the District of Columbia, July 28, 1886.

MARTIN S. FECHHEIMER *et al.*, Complainant-,
against
J. HOLLANDER *et al.*, Defendant-. } No. 10107, Equity Docket 26.

The President of the United States to Justus Hollander, Willie Hollander, Theodore Hollander, Edward Hollander, Samuel Bieber, Julius Lansburgh, Elias Travers, National Metropolitan Bank, Charles Baum, A. Kaufman, Daily Post Company, National Republican Company, Evening Critic Company, Wm. H. Slater, John Elliott, C. C. Glover, Thomas Hyde, E. F. Riggs, Thomas L. Riggs, and Alexander Elliott, defendant-:

42 You are hereby commanded to appear in this court at its first special term occurring ten days after service of this subpœna and answer the exigency of the original bill under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

[SEAL.]

R. J. MEIGS, *Clerk, &c.*,
By R. J. MEIGS, JR.,
Assistant Clerk.

MEMORANDUM.—That the defendant- herewith served *is* to enter their appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's Return.

Returned September 7, 1886.

Served Justus[1] Hollander July 28, '86, Samuel[6] Bieber and Wm. H.[15] Slater July 29, '86; also served National Metropolitan Bank, by[9] service on Geo. H. B. White, cashier; Daily Post[12] Company, by service on Edw'd T. Fletcher, treas said Co.; National[13] Republican Company, by service on E. W. Fox, pres't and manager said Co.; Evening[14] Critic Company, by service on Hallet Kilbourn, pres't said Co.; the National[22] Bank of Washington, by service on C. A. James, cashier, and E. F.[19] Riggs, July 30, 1886. Not to be found as to the others, Sept. 7, 1886.

A. A. WILSON, *Marshal.*

Motion for Security for Costs and Notice.

Filed August 2, 1886.

In the Supreme Court of the District of Columbia.

FECHHEIMER *et al.* *vs.* HOLLANDER *et al.* } No. 10107. Equity.

And now come- the defendant Samuel Bieber and because
43 the complainants are non-residents of the District of Columbia moves the court that they be required to give security for costs herein.

LEON TOBRINER,
Defendants' Solicitor.

Take notice that on Wednesday, the 4th day of August, A. D. 1886, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, I shall call the attention of the court to the foregoing motion.

LEON TOBRINER,
Defendants' Solicitor.

To Gen. S. S. Henkle, complainants' solicitor.

Demurrer of Riggs and Company.

Filed August 4, 1886.

In the Supreme Court of the District of Columbia.

M. S. FECHHEIMER *et al.*
vs.
JUSTUS HOLLANDER *et al.*
} No. 10107. Equity.

The demurrer of John Elliott, Charles C. Glover, Thomas Hyde, E. Francis Riggs, Thomas L. Riggs, and Alexander Elliott, doing business under the firm name of Riggs and Co., to the bill of complaint of M. S. Fechheimer and others against them and others in chancery exhibited.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in manner and form as the same are therein set forth, do demur thereto and for causes of demurrer show:

1. That the said complainants have not in and by their said bill stated such a case as doth or ought to entitle them to
44 any such discovery or relief as is thereby sought and prayed for from or against these defendants.

2. That if the matters stated do give the complainants any cause of complaint against these defendants the same is triable and determinable at law and ought not to be inquired of by this court.

3. Wherefore, and for divers other errors and imperfections, these defendants demand the judgment of this court whether they shall be compelled to make any further or other answer to the said bill or any of the matters and things herein contained; and pray to be hence dismissed with their reasonable costs in this behalf sustained.

JAMES M. JOHNSTON,
Solicitor for Above-named Defendants.

DISTRICT OF COLUMBIA, *ss:*

E. Francis Riggs, being duly sworn, deposes and says that he is one of the defendants in the above-entitled cause and is one of the defendants referred to in the above demurrer. Affiant says that the aforesaid demurrer is not interposed for delay.

E. FRANCIS RIGGS.

Subscribed and sworn to before me this fourth (4th) day of August, A. D. 1886.

[SEAL.] D. RITTENHOUSE,
Notary Public.

I do hereby certify that the above demurrer is, in my opinion, well founded in law.

JAMES M. JOHNSTON,
Solicitor for Defendant Riggs and Co.

45 *Entry in Order Book* 10, *Page* 58.

FECHEIMER *et al.* } 10107.
vs.
HOLLANDER.

The clerk will enter my appearance for defendants Nos. 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14.

LEON TOBRINER, *Attorney.*

August 17, '86.

Appearance, as ordered, entered.
'86, 8, 17.

BY THE CLERK.

Demurrer of Defendent- Samuel Bieber et al.

Filed August 19, 1886.

In the Supreme Court of the District of Columbia.

MARTIN S. FECHHEIMER *et al.* } No. 10107. Equity.
vs.
JUSTUS HOLLANDER *et al.*

The demurrer of defendants Samuel Bieber, Justus Hollander, Willie Hollander, Julius Lansburgh, Elias Travers, James Hollander, Theodore Hollander, Charles Baum, A. Kaufman, Daily Post Company, National Republican Company, Evening Critic Company, William H. Slater, Edward Hollander to the bill of complaint of Martin S. Fechheimer *et al.* against them and others in chancery exhibited.

These defendants, by protestation, not confessing or admitting all or any of the matters and things in the said bill of complaint to be true in manner and form as the same are therein set forth, do demur thereto, and for cause of demurrer show:

1. That the said complainants have not in and by their
46 said bill stated such a case as doth or ought to entitle them to any such discovery or relief as is thereby sought and prayed for from or against these defendants.

2. That if the matters stated do give the complainants any cause of complaint against these defendants the same is triable and determinable at law and ought not to be inquired of by this court.

3. Because the complainants have a plain and adequate remedy at law.

4. Wherefore, and for divers other errors and imperfections, these defendants demand the judgment of this court whether they shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf sustained.

LEON TOBRINER,
Solicitor for Above-named Defendant.

In my opinion the foregoing demurrer is well founded in point of law.

LEON TOBRINER, *Solicitor.*

DISTRICT OF COLUMBIA, *ss:*

Samuel Bieber, being duly sworn, deposes and says that he is one of the defendants in the above-entitled cause and one of the defendants referred to in the above demurrer. Affiant says that the aforesaid demurrer is not interposed for delay.

SAMUEL BIEBER.

Subscribed and sworn to before me this 17th day of August, A. D. 1886.

R. J. MEIGS, *Clerk,*
By L. P. WILLIAMS,
Assistant Clerk.

47 *Entries in Order Book* 10, *Pages* 58 *and* 71.

FECHEIMER *et al.*
vs.
HOLLANDER *et al.* } 10107.

Clerk will please calendar this case for hearing on defendants' demurrer to complainants' bill.

LEON TOBRINER, *Solicitor.*

August 19, '86.

Calendared by order.

BY THE COURT.

'86, 8, 19.

FECKHEIMER
vs.
HOLLANDER. } 10107, Docket 26.

Clerk will please enter my appearance for defendant The National Bank of Washington.

WM. F. MATTINGLY,
By D. O. C. C.

Appearance, as ordered, entered.

BY THE CLERK.

'86, 9, 7.

48 *Order Sustaining Demurrer and Dismissing Bill. Appeal Noted.*

Filed January 18, 1887.

In the Supreme Court of the District of Columbia.

MARTIN S. FECHHEIMER *et al.*
vs.
JUSTUS HOLLANDER *et al.*
} In Equity. No. 10107.

This cause coming on regularly to be heard on the demurrer of the defendants to the bill of complaint, it is by the court this 18th day of January, 1887, ordered, adjudged, and decreed that said demurrer be, and it is hereby, sustained, and the bill of complaint be, and it is hereby, dismissed with costs.

From this decree complainants take an appeal and the penalty of the bond for costs on said appeal is fixed at one hundred dollars.

CHARLES P. JAMES, *Justice.*

Amended Decree.

Filed January 20, 1887.

In the Supreme Court of the District of Columbia.

FECHHEIMER, GOODKIND AND CO.
vs.
JUSTUS HOLLANDER *et al.*
} Equity. No. 10107.

On motion of the counsel for the plaintiff-, it is this 20th day of January, 1887, ordered that the decree entered in this cause on the 18th day of January, 1887, be amended by adding after the word "dismissed" the words "without prejudice."

CHARLES P. JAMES, *Justice.*

49 *Undertaking for Appeal by Plaintiff- to General Term.*

Filed January 22, 1887.

In the Supreme Court of the District of Columbia, the 22nd Day of December, 1887.

FECHHEIMER, GOODKIND AND CO., Plaintiffs,
vs.
JUSTUS HOLLANDER *et al.*, Defendants.
} No. 10107.

The plaintiffs, having appealed to the general term from the decree pronounced herein on the 18th of December, 1887, in the equity court, and —— ——, surety for said appeal, for themselves and each of them, their and each of their heirs and personal representa-

tives, appearing and submitting to the jurisdiction of the said general term, hereby undertake to abide by and perform and pay its judgment, which they agree may be pronounced against all of them, to the amount of $100.

——— ———, *Appellant.*
BUSHROD ROBINSON, *Surety.*

Approved 22nd January, 1887.
CHARLES P. JAMES, *Justice.*

Decree Reversing Decree Below.

Filed October 8, 1888.

In the Supreme Court of the District of Columbia, Sitting in General Term.

FECHHEIMER, GOODKIND AND CO. *vs.* JUSTUS HOLLANDER *et al.* } Equity. No. 10107.

This cause came on for hearing before appeal from the decree of the special term sustaining the demurrer of the defendants to the bill and was argued by counsel and submitted to the court.

50 On consideration whereof it is, this 8th day of October, 1888, ordered, adjudged, and decreed that the decree of the special term be, and the same is hereby, removed and set aside, and the cause is remanded to the special term for further proceedings. It is further ordered that the defendant assignee Bieber pay the costs of the appeal, taxed at —, and that in default of such payment for ten days that execution issue therefor as upon judgment at law.

E. F. BINGHAM,
Chief Justice.

Answer of Defendant Justus Hollander.

Filed March 30, 1889.

In the Supreme Court of the District of Columbia.

MARTIN FECHEIMER *et al.* *vs.* JUSTUS HOLLANDER *et al.* } No. 10107. Equity.

Separate answer of defendant Justus Hollander to complainants' bill.

This defendant, by protestation, not confessing or admitting any of the matters in said bill to be true as they are therein set forth, for answer to so much and to such parts thereof as he is advised it is necessary and material for him to answer, makes answer and says:

1, 2, and 3. This defendant believes the allegations in paragraph one, two, and three of said bill to be true.

4th. The respondent admits that he has for several years prior to the filing of the bill herein been engaged in the clothing business in the city of Washington, but he emphatically denies that he has, as alleged in said bill, been insolvent for more than a year last past. He admits that on the 15th day of June, A. D. 1886, he executed an assignment for the benefit of his creditors to his
51 codefendant Bieber.

5th. Respondent admits that there are no accompanying schedules of the property assigned, but he avers that the property conveyed is fully and sufficiently described in said deed. The stock of gentlemen's furnishing goods and clothing upon premises No. 1217 Pennsylvania avenue northwest, with the exception of some exempt household property or furniture, was the only property and assets of this respondent, and they are, as he is informed by counsel, sufficiently described in said deed. He is further informed that the want of accompanying schedules does not vitiate said deed. He admits that Exhibit B filed with said bill is a true copy of said deed of assignment.

6th. Answering paragraph six of said bill, this defendant says that Exhibit C is, owing to some inadvertance, incorrect in two of its items, although the "totals" therein are correct, and after the discovery of these errors correct statements were sent out. He avers that the stock of said store was appraised at seventeen thousand five hundred and ninety-four and $\frac{33}{100}$ dollars ($17,594.33) instead of seventeen thousand five hundred and five and $\frac{33}{100}$ dollars ($17,505.33), and that his indebtedness to the defendant Elias Travers is six thousand seven hundred and eighty dollars ($6,780.00) instead of six thousand three hundred and eighty dollars ($6,380.00), as therein set forth, making his assets appraised at eighteen thousand one hundred and fifty-seven an- $\frac{33}{100}$ dollars ($18,157.33) instead of eighteen thousand and sixty-eight and $\frac{33}{100}$ dollars ($18,068.33), as set forth in said paragraph.

Defendant admits that this is all the property that his assignee received, inasmuch as it was all that he had, with the exception of his household furniture, as hereinbefore stated. Respondent admits that the total of his indebtedness is thirty-nine thousand and twenty and $\frac{93}{100}$ dollars ($39,020.93). The remaining averments of said paragraph are more mathematical calculations and are immaterial.

7th. Answering paragraph seven of said bill, defendant
52 admits that the complainants are wholesale clothing merchants, and that the judgment which they obtained against him as set forth in paragraph three (3) of said bill was for part of goods delivered to him in October, 1885; he admits that they also hold a note for one thousand dollars drawn by him, dated February 15th, 1886, and payable four months after date, and that the consideration thereof is goods delivered by complainants to him in October, 1885. He further admits that he is indebted to them in the additional sum of eighteen hundred and forty-six and $\frac{50}{100}$ dollars for goods delivered to him in April, 1886, and in explanation of the dealings between complainants and this defendant he says:

That on September 12th, October 6th and 16th, 1885, complainants sent him goods theretofore purchased of them amounting to..... $1,509 69
On Oct. 26th, 27th, and 30th, Nov. 2 and Dec. 1st, goods amounting to..... 1,525 40

In all..... $3,035 09

Which total amount was settled by this defendant executing and delivering to said complainants his four (4) promissory notes, all bearing date February 15th, 1886, and payable as follows:

Note at thirty days..... $535 09
" " sixty " 500 00
" " ninety " 1,000 00
" " four months..... 1,000 00

Of these, the first and second, amounting in all to ten hundred and thirty-five and $\frac{9}{100}$ dollars, with interest, have been paid; the remaining two notes are the notes mentioned in complainants' bill. On the ninety (90) day note, for one thousand dollars, complainants recovered judgment on the law side of this court in cause No. 26947 the 9th day of July, A. D. 1886, as set forth in paragraph three of said bill. On the four (4) months' note, also for one thousand dollars, and the open account of eighteen hundred and forty-six and $\frac{50}{100}$ dollars set forth in said seventh paragraph complainants
53 recovered judgment against this defendant on the law side of this court on the 27th day of October, A. D. 1887, in cause No. 28016. Both said judgments were recovered long after the execution of the said deed of assignment, the said cause No. 28016 being instituted on the 16th day of August, 1887, fully two months after the execution of said deed and after the institution of proceedings in this cause. The said two judgments represent the whole indebtedness due from this defendant to said complainants on all accounts whatsoever.

8th. With respect to the purchases, amounting to eighteen hundred and forty-six and $\frac{50}{100}$ dollars, this defendant says they were made some time about the middle of the month of March, 1886, but were not shipped to this defendant until about the dates mentioned in complainants' bill. Defendant denies that a large quantity of the goods of this purchase remained in his store at the time of his assignment, but, on the contrary, says that not more than —— dollars' worth of said goods were then on hand. Defendant admits that he made other purchases from other wholesale merchants upon credit, but he denies that they were made but a short time before executing said deed of assignment. He avers that his spring purchases in 1886 were made at the time that such purchases had usually theretofore been made by him, and that there was nothing unusual in the amount thereof.

9th. Answering paragraph nine, this defendant denies that when he made these last spring purchases from complainants and other merchants he well knew he was hopelessly insolvent, and that he

did not intend to and knew that he could not pay for said goods, and that he concealed these facts from complainants; on the contrary, he avers that he had every intention of paying for all goods purchased by him, and that he had no intention of failing nor did he anticipate such action. He avers that his whole dealings during the nineteen (19) years of his business career in this District have been characterized by honest and fair dealing and through your respondent's financial affairs by reason of liabilities he was compelled to assume has been somewhat complicated for some years prior
54 to the execution of said deed, and out of which defendant had, by hard efforts and strict attention to business, been slowly extricating himself. Yet this defendant felt assured that he would finally relieve himself of all indebtedness, and he avers that he would have succeeded in so doing if he had not been overcome by the misfortunes consequent upon a bad season and the other circumstances hereinafter set out; that he was no more involved when he made said last purchases than he was at the time of making previous purchases and for which he had duly paid. Further answering said paragraph, this defendant emphatically denies that the said last spring purchases from complainants or any other purchases from them or any other of his creditors were fraudulent in any respect. He denies that the goods purchased from complainants have been so mingled with the goods purchased from other dealers and the old stock that it would be difficult to identify them; on the contrary, he says that the goods can be easily identified by complainants or their agents by means of their lot numbers and other indicia upon them, inasmuch as each article manufactured by complainants bears their firm ticket; and he further avers that complainants, after the execution of said deed and after the institution of these proceedings, with full knowledge and notice of all the facts and circumstances which they claim establish a fraudulent intent on the part of this defendant in the purchase of said goods, did fully and deliberately approve and ratify the several sales made by them to him, and especially the sales of April, 1886, amounting to eighteen hundred and forty-six and $\frac{50}{100}$ dollars, by suing this defendant upon the contract of sale therefor and recovering against him a judgment for the amount thereof in cause No. 28016, law, of this court, as set forth in answer to paragraph seven of said bill, and this defendant claims the benefit of these facts as though he had especially pleaded the same.

10th. The preferred debts as set forth in paragraph ten (10) of said bill are substantially correct.

55 11th. This defendant admits that there are sixty-eight preferred debts made by said deed, the amount of which is fourteen thousand seven hundred and forty-four and $\frac{71}{100}$ dollars, and that few thereof are to merchandise creditors. He admits that his unpreferred debts amount to about twenty-four thousand two hundred and seventy-six and $\frac{22}{100}$ dollars, the bulk of which is for merchandise used by him in the conduct of his business. He admits that the first preference is to his brother Willie Hollander for two hundred and ninety-three and $\frac{83}{100}$ dollars for goods. He de-

nies that the said debt is pretended and a fraud, and avers that he actually owes said amount as set forth in his answer to the first interrogatory to complainants' bill attached. He admits that the second preference is to James Hollander, another brother. He denies that said debt is fraudulent, and says he is indebted in said amount, as also set forth in said answer to said interrogatory No. 1.

12th. Defendant avers that the preferances to said Travers amount to sixty-seven hundred and eighty dollars instead of sixty-three hundred and eighty dollars. He admits that the rate of interest upon the notes held by said Travers is eight (8) per cent. Defendant does not know that said Travers was engaged in the business of a lender of money, but he says that said Travers was the owner of the store wherein the defendant was conducting his business, and had for some time been accommodating him with loans of cash monies wherewith to meet his maturing merchandise payments, as set forth more particularly in his answer to said interrogatories, and defendant says that at the time of the execution of said deed he was *bona fide* indebted to said Travers in the amounts and notes preferred to him. It is true that Theodore Hollander is surety upon most of all of said notes, but he was surety merely for the accommodation of this defendant and received no benefit from said loans whatever.

13th. Answering paragraph thirteen, defendant says he admits that the National Bank of Washington is a preferred creditor in the amount of twenty-three hundred and twenty-five dollars.
56 This amount is for money advanced to this defendant, and notes upon which said advances were made were all executed by the parties thereto for the accommodation of defendant, they receiving no benefit for the moneys derived therefrom. The history of said notes is given in the answer to the interrogatories hereto attached.

14th. Defendant admits that the defendant Riggs and Co. are preferred in the amount of twenty hundred and twenty-five dollars, as set forth in the copy of said deed of assignment filed with complainants' bill. These preferences are for money loaned by said Riggs and Co. to said Justus Hollander upon the notes preferred.

15th. Defendant admits the preference to the National Metropolitan bank, as set forth in paragraph fifteen. The said preference is for money loaned by said bank to said Justus Hollander for the purpose of paying merchandise debts, and all the other loans made by this defendant's preferred creditors and which are mentioned in said deed were made and used by this defendant for the same purpose.

16th. Defendant admits that at the time of his assignment the debts owing to the National Bank of Washington, Riggs and Co., and the National Metropolitan bank aggregated forty-five hundred and fifty dollars, but this amount was not originally borrowed as alleged in said paragraph, but as set forth and explained in defendant's answer to said interrogatories. Defendant admits that shortly before the execution of said deed he was pressed by complainants for money, and this pressure, together with his inability to raise

funds otherwise than from the banks, which necessarily would have entailed his further involving his relatives and friends, necessitated and precipitated his failure. He denies that for some time before his assignment he paid little or nothing upon his debts, but avers that his answer to complainants' interrogatories will show that he paid out every cent he received, and that within sixty days before executing said deed he paid to complainants the sum of ten hundred and forty-four and $\frac{65}{100}$ dollars.

57 17th. Defendant admits that Theodore Hollander is his brother. The defendants Charles Baum and Julius Lansburgh are not related to this defendant. He admits that his brother was socially intimate with him; said Baum and Lansburgh were not. He denies that they or any of them knew or had reason to know that he was insolvent, and that he was defrauding the plaintiffs and other dealers from whom he was purchasing goods without the intention of paying for them or the ability to do so. They could not have known of such an alleged intention because this defendant had never had any such intention, but was actuated in making said purchases with the same honest intention that had actuated him throughout his whole business career of twenty years.

18th. This defendant is informed that the eighteenth paragraph of said bill states a conclusion of law which he is not called upon to answer. He is informed by counsel that the proposition therein embodied is bad in law.

19th. Defendant admits that Julius Lansburgh is preferred, as set forth in paragraph nineteen of said bill. He denies, however, that said preference is void.

20th. He admits that the defendant Louis Heller is preferred. He admits that the consideration therefor is borrowed money; he denies that the same is void.

21st. The sixty-fourth, sixty-fifth, and sixty-sixth are preferences to newspaper companies for advertising defendant's business. The advertising was done a comparatively short time before defendant's failure. He avers that said preferences are good and not void as claimed.

22nd. The preferences to defendant William H. Slater are for moneys loaned by him to this defendant and used for the purpose of paying merchandise debts. Defendant avers that they are not void.

23rd. The twenty-third paragraph contains another proposition of law which this defendant is informed is bad.

58 24th. He admits that the preferred creditors mentioned in paragraph twenty-four have sureties upon the loans made by them to this defendant, but he is not aware that complainants have any equities which, as against said preferred creditors, would compel said creditors to hold said sureties before coming upon said assigned property. He denies that complainants or other merchandise creditors have any liens upon said assigned property. He was advised at the time of executing said deed and now avers on information and belief that by virtue of the absolute dominion that a man has over his property he had a right to make the conveyance

as he did, preferring those debts which were for money borrowed for the purpose of carrying on his business.

25th. He admits that the defendant Samuel Bieber immediately after the execution of said deed took possession of said stock and that he sold the same. He admits that he was for a time, owing to his knowledge of the nature of said stock, assisting said Bieber in the sale thereof. This defendant was interested in seeing that as much as possible would be realized therefrom towards the payment of his debts.

26th. He denies that said Bieber gave little time or attention to said business, but avers that he was in constant attendance at said store. He denies that said business was being conducted in the interest and for the benefit of this defendant, unless the realization of the largest amount possible from said assets can be alleged to be for said interest and benefit.

And this defendant denies all and all manner of unlawful combination, confederacy, fraud, and fraudulent interest as in said bill alleged, and prays to be hence dismissed with his proper costs in this behalf incurred.

JUSTUS HOLLANDER.

LEON TOBRINER,
Solicitor for Defendant.

59 I, Justus Hollander, on oath do depose and say I have heard read the foregoing answer by me subscribed, and know the contents thereof; that the facts therein stated of my personal knowledge are true and those stated on information and belief I believe to be true.

JUSTUS HOLLANDER.

Subscribed and sworn to before me this eleventh day of February, A. D. 1889.

R. J. MEIGS, *Clerk*,
By A. M. CLANCY,
Assistant Clerk.

EXHIBIT TO ANSWER OF JUSTUS HOLLANDER.

Filed March 30, 1889.

FECHHEIMER *et al.* *vs.* HOLLANDER *et al.* } No. 10107. Equity.

Answer to Interrogatories Propounded by Complainants to Defendant Justus Hollander.

Answer to interrogatory No. 1.

First preference to Willie Hollander was made as follow-:

Mr. Willie Hollander formerly kept a gents' furnishing and hat store at 1421 Penna. Ave. N. W., near Willard's hotel. I bought

out his stock about March, 1886, and had the same removed to my store 1217 Penn. avenue N. W.

The amount preferred to him is due him on this purchase.

2nd Preference to James Hollander.

From May 9, 1882, due him		25 00
July 6, 1882. By cash from James Hollander		60 00
Salary from May 9, 1882, to Aug. 9, 1882		75 00
		$160 00
60	All. for mdse. and cash	38 10
		121 90
Due to James Hollander from store 1421 Pa. Ave		56 07
		177 97
Aug. 24, 1882.	Paid for James to Germany	25 00
		152 97
July 13, 1883.	By cash from James H	100 00
		252 97
July 17, 1883.	Drawn by James H	12 50
		240 47
Jan. 4, 1884.	By cash from James H	35 00
		275 47
Jan. 5, 1884.	By cash from James H	25 00
		300 00
Aug. 11, 1884.	For James H. to Germany	21 60
		278 40
Oct. 13, 1885.	Drawn by James H	25 00
		253 40
Oct. 15, 1885.	Drawn by James H	17 00
		236 40
Jan. 8, 1886.	For building ass. stock	328 00
		$564 40

James Hollander.

1882, June	2.	1 suit clothes	19 00
" June	3.	By cash	5 00
" July	2.	By cash	5 00
" Aug.	5.	By cash	7 00
" Aug.	5.	Mdse	2 10
			$38 10

1883, July	17.	James Hollander to Germany.....	12 50
1884, Aug.	11.	For James Hollander to Germany...	21 60
1885, Oct.	13.	Wedding present for Edward	25 00
Oct.	15.	Prince Albert suit.....	17 00

61 *Due by Justus Hollander to Elias Travers.*

1879, Dec.	20.	Loans on my notes.....	$500 00
1882, Jan.	28.	"	500 00
1882, April	6.	"	500 00
1882, Sept.	6.	"	1,000 00
1883, Jan.	6.	"	1,000 00
1883, May	12.	"	1,000 00
1883, Oct.	1.	"	1,000 00
1883, Dec.	12.	"	1,000 00
1884, March	14.	"	1,000 00
1884, June	13.	"	1,000 00
1884, Aug.	29.	"	1,000 00
1884, Oct.	20.	"	1,000 00
1884, Dec.	17.	"	1,000 00
1885, Jan.	30.	"	1,000 00
1885, March	13.	"	1,000 00
1885, April	27.	"	1,000 00
1885, June	15.	"	1,000 00
1885, July	17.	"	1,000 00
1885, Aug.	28.	"	1,000 00
1885, Oct.	14.	"	1,000 00
1885, Nov.	27.	"	1,000 00
1885, Dec.	19.	" renewal.....	500 00
1886, Jan.	15.	"	1,000 00
1886, Febr.	12.	"	1,000 00
1886, Febr.	19.	" renewal.....	1,000 00
1886, March	26.	" renewal....	1,000 00
1886, May	12.	" renewal..... ..	800 00
1886, June	7.	" renewal.....	500 00
			$25,300 00
Paid by cash and renewal and cash			18,900 00
			$6,400 00
Balance due on loan of Nov. 9, 1885.....			380 00
			$6,780 00

62 *Paid by Justus Hollander to Elias Travers.*

1882, May	6.	Paid	$125 00
1882, June	6.	"	125 00
1882, July	6.	"	125 00
1882, July	29.	"	125 00
1882, Oct.	7.	"	100 00
1882, Nov.	7.	"	100 00

1882, Dec.	9.	Paid	$100 00
1883, Jan.	6.	"	100 00
1883, Febr.	10.	"	200 00
1883, March	10.	"	200 00
1883, April	14.	"	200 00
1883, May	12.	"	200 00
1883, June	9.	"	200 00
1883, June	16.	"	100 00
1883, July	7.	"	200 00
1883, July	14.	"	100 00
1883, Aug.	18.	"	200 00
1883, Sept.	15.	"	200 00
1883, Oct.	13.	"	200 00
1883, Nov.	10.	"	100 00
1883, Nov.	17.	"	100 00
1883, Dec.	15.	"	100 00
1884, Jan.	5.	"	100 00
1884, Jan.	19.	"	100 00
1884, Febr.	2.	"	200 00
1884, Febr.	16.	"	100 00
1884, March	1.	"	200 00
1884, March	14.	"	200 00
1884, April	5.	"	100 00
1884, April	19.	"	200 00
1884, May	3.	"	100 00
1884, May	3.	"	25 00
1884, May	13.	"	50 00
			$4,575 00

63 *Paid by Justus Hollander to Elias Travers.*

		Amount forward	$4,575 00
1884, May	17.	Paid	200 00
1884, May	31.	"	100 00
1884, May	31.	"	25 00
1884, June	13.	"	200 00
1884, June	14.	"	25 00
1884, July	5.	"	100 00
1884, July	19.	"	200 00
1884, Aug.	2.	"	100 00
1884, Aug.	2.	"	75 00
1884, Aug.	19.	"	200 00
1884, Sept'r	20.	"	300 00
1884, Sept'r	20.	"	50 00
1884, Oct.	18.	"	300 00
1884, Nov.	8.	"	50 00
1884, Nov.	15.	"	300 00
1884, Dec.	6.	"	100 00
1884, Dec.	19.	"	300 00
1884, Dec.	20.	"	50 00

1885, Jan.	3.	Paid	$100 00
1885, Jan.	17.	"	200 00
1885, Jan.	24.	"	100 00
1885, Jan.	30.	"	100 00
1885, Jan.	30.	"	50 00
1885, Febr.	21.	"	200 00
1885, Febr.	28.	"	100 00
1885, March	13.	"	200 00
1885, March	21.	"	100 00
1885, March	21.	"	50 00
1885, April	4.	"	100 00
1885, April	18.	"	200 00
64			
1885, April	25.	Paid	200 00
1885, May	2.	"	100 00
1885, May	9.	"	50 00
1885, May	23.	"	200 00
			$9,300 00

Paid by Justus Hollander to Elias Travers.

		Amount forwarded	$9,300 00
1885, June	6.	Paid	300 00
1885, June	15.	"	100 00
1885, June	20.		100 00
1885, June	20.		100 00
1885, July	3.		300 00
1885, July	17.		200 00
1885, July	25.		200 00
1885, Aug.	21.		100 00
1885, Aug.	8.		50 00
1885, Aug.	15.		100 00
1885, Aug.	27.		400 00
1885, Aug.	31.		200 00
1885, Sept'b'r	19.		50 00
1885, Sept'b'r	19.		300 00
1885, Oct.	3.		300 00
1885, Oct.	14.		400 00
1885, Oct.	31.		300 00
1885, Nov.	7.		50 00
1885, Nov.	21.		400 00
1885, Nov.	27.		300 00
1885, Dec.	19.		150 00
1886, Jan.	2.		300 00
1886, Jan.	15.		300 00
1886, Jan.	23.		100 00

65

1886, Jan.	30.	$300 00
1886, Febr.	12.	400 00
		$15,100 00
By renewal Dec. 19, 1885, and Febr. 19, March 26, May 12, June 7, 1886		$3,800 00
		$18,900 00

Due by Justus Hollander to Elias Travers on Account of Note Dated Nov. 9, 1885, to be Repaid in Weekly Instalments of $20.00 Each.

Received the money the day I gave the note for	$1,000 00
Paid 31 weekly payments	620 00
Balance	$380 00

Paid by Justus Hollander to Elias Travers on Account of $1,000.00 Loan.

1	payment,	Nov.	14, 1885	$20 00
2	"	Nov.	21, 1885	20 00
3	"	Nov.	28, 1885	20 00
4	"	Dec.	5, 1885	20 00
5	"	Dec.	12, 1885	20 00
6	"	Dec.	19, 1885	20 00
7	"	Dec.	26, 1885	20 00
8	"	Jan.	2, 1886	20 00
9	"	Jan.	9, "	20 00
10	"	Jan.	16, "	20 00
11	"	Jan.	23, "	20 00
12	"	Jan.	30, "	20 00
13	"	Febr.	6, "	20 00
14	"	Febr.	13, "	20 00
15	"	Febr.	20, "	20 00
16	"	Febr.	27, "	20 00

66

17	"	March	6, 1886	20 00
18	"	March	13, "	20 00
19	"	March	20, "	20 00
20	"	March	27, "	20 00
21	"	April	3, "	20 00
22	"	April	10, "	20 00
23	"	April	17, "	20 00
24	"	April	24, "	20 00
25	"	May	1, "	20 00
26	"	May	8, "	20 00
27	"	May	15, "	20 00
28	"	May	22, "	20 00

29	payment,	May	29,	1886	$20 00
30	"	June	5,	"	20 00
31	"	June	12,	"	20 00
					$620 00

Preferences to National Bank of Washington.

Preference No. 55.

Note from E. Hollander, indorsed by Chas. Baum for my accommodation, dated March 23, 1886, for loan from Bank of Washington, amount	$850 00
June 10, 1886, curtail on above note	25 00
Renewal on June 10, 1886, new note for	$825 00

Preference No. 17.

Note from A. Kaufman for my accommodation, from the Bank of Washington, September 23, 1885, amount	$200 00
Paid above note.	
New note dated Nov. 23, 1885	175 00
Paid above note.	
67 New note dated Jan. 25, 1886	150 00
March 29, 1886, curtail on note	25 00
March 29, 1886, renewal note for	$125 00
May 26, 1886, curtail on note	25 00
New note dated May 26, 1886	$100 00

Preferences to Nat. Bank of Washington.

Preference No. 35.

Note from Theodore Hollander for my accommodation, dated May 18, 1885, and given to Bank of Washington for loan of	$750 00
Above note paid Aug. 20, 1885.	
New note dated Aug. 20, 1885	700 00
Above note paid Nov. 23, 1885.	
New note dated Nov. 23, 1885	675 00
Curtail on note Febr. 26, 1886	25 00
Renewal note dated Febr. 26, 1886	$650 00
Curtail on note May 20, 1886	25 00
Renewal note dated May 20, 1886	$625 00

Preference No. 33.

Note from H. Hollander for my accommodation, dated July 13, 1881, and given to Bank of Washington for loan, amount		$1,000 00
Above note paid Oct. 13, 1881.		
New note dated Oct. 13, 1881		1,000 00
Above note paid Jan. 16, 1882.		
68 New note dated Jan. 16, 1882		1,000 00
Above note paid April 18, 1882.		

Preferences to Nat. Bank of Washington.

No. 33—Continued.

New note dated April 18, 1882	1,000 00
Above note paid July 20, 1882.	
New note dated July 20, 1882	1,000 00
Above note paid Oct. 23, 1882.	
New note dated Oct. 23, 1882	1,000 00
Above note paid June 26, 1883.	
New note dated Jan. 26, 1883	1,000 00
Above note paid April 28, 1883.	
New note dated April 28, 1883	1,000 00
Above note paid July 28, 1883.	
New note dated July 28, 1883	1,000 00
Above note paid Oct. 31, 1883.	
New note dated Oct. 31, 1883	1,000 00
Above note paid Jan. 31, 1884.	
New note dated Jan. 31, 1884	950 00
Above note paid April 30, 1884.	
New note dated July 30, 1884	925 00
Above note paid Aug. 1, 1884.	
New note dated Aug. 1, 1884	800 00
Above note paid Nov. 3, 1884.	
New note dated Nov. 3, 1884	675 00
Above note paid Febr. 2, 1885.	
New note dated Febr. 2, 1885	600 00
Above note paid May 4, 1885.	
New note May 4, 1885 (dated)	575 00
Above note paid Aug. 6, 1885.	
69 New note dated Aug. 6, 1885	550 00
Above note paid Nov. 9, 1885.	

Preferences to Nat. Bank of Washington.

No. 33—Continued.

New note dated Nov. 9, 1885	$525 00
Curtail on above note Nov. 9, 1885	25 00
Renewal note dated Febr. 12, 1886	$500 00
Curtail on above note May 12, 1886	25 00
Renewal note dated May 12, 1886	$475 00

Preferences to Nat. Bank of Washington.

Preference No. 16.

Note from Chas. Baum for my accommodation, dated Dec. 26, 1878, and given to Bank of Washington for loan, amount	$700 00
Above note paid March 25, 1879.	
New note dated March 25, 1879	700 00
Above note paid June 24, 1879.	
New note dated June 24, 1879	700 00
Above note paid Sept'b'r 22, 1879.	
New note dated Sept. 22, 1879	700 00
Above note paid Dec. 22, 1879.	
New note dated Dec. 22, 1879	700 00
Above note paid March 22, 1880.	
New note dated March 22, 1880	700 00
Above note paid June 21, 1880.	
New note dated June 21, 1880	700 00
Above note paid Sept. 22, 1880.	
New note dated Sept. 22, 1880	700 00
Above note paid Dec. 24, 1880.	
New note dated Dec. 24, 1880	700 00
Above note paid March 26, 1881.	
70 New note dated March 26, 1881	700 00
Above note paid June 27, 1881.	
New note dated June 27, 1881	700 00
Above note paid Sept. 28, 1881.	
New note dated Sept. 28, 1881	700 00
Above note paid Dec. 28, 1881.	
New note dated Dec. 28, 1881	700 00
Above note paid March 30, 1882.	
New note dated March 30, 1882	700 00
Above note paid July 3, 1882.	

Preferences to Nat. Bank of Washington.

Preference No. 16—Continued.

New note dated July 3, 1882	700 00
Above note paid Oct. 5, 1882.	
New note dated Oct. 5, 1882	700 00
Above note paid Jan. 8, 1883.	
New note dated Jan. 8, 1883	700 00
Above note paid April 11, 1883.	
New note dated April 11, 1883	650 00
Above note paid July 13, 1883.	
New note dated July 13, 1883	650 00
Above note paid Oct. 15, 1883.	
New note dated Oct. 15, 1883	650 00
Above note paid Jan. 18, 1884.	

New note dated Jan. 18, 1884	$625 00
Above note paid April 21, 1884.	
New note dated April 21, 1884	625 00
Above note paid July 23, 1884.	
New note dated July 23, 1884	500 00
Above note paid Oct. 23, 1884.	
71 New note dated Oct. 23, 1884	450 00
Above note paid Jan. 26, 1885.	
New note dated Jan. 26, 1885	425 00
Above note paid April 28, 1885.	
New note dated April 28, 1885	400 00
Above note paid July 31, 1885.	
New note dated July 31, 1885	350 00
Above note paid Nov. 3, 1885.	
Febr. 6, 1886, curtail on above note	25 00
Renewal note dated Febr. 6, 1886	$325 00
May 6, 1886, curtail on above note	25 00
Renewal note dated May 6, 1886	$300 00

Preferences to Riggs and Co.

Preference No. 25.

My note, indorsed by E. Hollander for my accommodation, dated April 26, 1886, and given to Riggs and Co. for loan, amount	$350 00
June 11, 1886, curtail on note	25 00
Renewal note June 11, 1886	$325 00

Preference No. 15.

My note, indorsed by E. Hollander for my accommodation and given to Riggs and Co. for loan, dated Febr. 20, 1886, amount	$300 00
April 23, 1886, paid above note.	
New note dated April 23, 1886	275 00
June 10, 1886, curtail on above note	25 00
Renewal note dated June 10, 1886	$250 00

72 *Preferences to Riggs and Co.*

Preference No. 42.

Note of A. Kaufman, endorsed by myself for my own accommodation and given to Riggs and Co. for loan, dated *dated* Sept'r 15, 1885, amount	$300 00
Above note paid Nov. 12, 1885.	
New note dated Nov. 12, 1885	250 00
Above note paid Jan. 11, 1886.	

New note dated Jan. 11, 1886	$225 00
Above note paid March 12, 1886.	
New note dated March 12, 1886	200 00
June 9, 1886, curtail on above note	25 00
Renewal note dated June 9, 1886	$175 00

Preference No. 34.

My note, indorsed by E. Hollander for my own accommodation and given to Riggs and Co., dated March 10, 1886, amount	$275 00
June 3, 1886, curtail on above note	25 00
Renewal note dated June 3, 1886	$250 00

Preferences to Riggs and Co.

Preference No. 49.

My note, indorsed by Chas. Baum for my own accommodation and given to Riggs and Co. for loan, dated May 29, 1884, amount	$750 00
Above note paid Aug. 30, 1884.	
New note dated Aug. 30, 1884	700 00
Above note paid Dec. 1, 1884.	
New note dated Dec. 1, 1884	650 00
Above note paid March 2, 1885.	
New note dated March 2, 1885	600 00
Above note paid June 2, 1885.	
73 New note dated June 2, 1885	575 00
Above note paid Aug. 31, 1885.	
New note dated Aug. 31, 1885	550 00
Above note paid Dec. 1, 1885.	
New note dated Dec. 1, 1885	525 00
Above note paid March 4, 1886.	
New note dated March 4, 1886	500 00
May 28, 1886, curtail on above note	25 00
Renewal note dated May 27, 1886	$475 00

Preference- to Riggs and Co.

Preference No. 32.

My note, indorsed by Julius Lansburgh for my own accommodation and given to Riggs and Co. for loan, dated May 29, 1884, amount	$500 00
Above note paid Aug. 30, 1884.	
New note dated Aug. 30, "	475 00
Above note paid Dec. 1, "	
New note dated Dec. 1, "	450 00
Above note paid March 2, 1885.	

New note dated March 2,	1885	$375 00
Above note paid June 2,	"	
New note dated June 2,	"	350 00
Above note paid Aug. 31,	"	
New note dated Aug. 31,	"	325 00
Above note paid Dec. 1,	"	
New note dated Dec. 1,	"	300 00
Above note paid March 4, 1886.		
New note dated March 4,	"	275 00
May 21, 1886, curtail on above note		25 00
Renewal note dated May 27, 1886		$250 00

Preferences to Riggs and Co.

Preference No. 18.

74	My note, indorsed by Theodore Hollander for my own accommodation and given to Riggs and Co. for loan, dated Febr. 7, 1885, amount	$500 00
Above note paid May 8, 1885.		
New note dated May 8, 1885		450 00
Above note paid Aug. 10, 1885.		
New note dated Aug. 10,	"	400 00
Above note paid Nov. 10,	"	
New note dated Nov. 10,	"	350 00
Above note paid Febr. 13, 1886.		
New note dated Febr. 13,	"	325 00
Above note paid May 12,	"	
New note dated May 12,	"	300 00

Preference to Nat. Met. Bank.

Preference No. 7.

My note, indorsed by Theodore Hollander for my own accommodation, dated May 4, 1886, and given to Nat. Met. bank for loan, amount	$200 00

Preference to Julius Lansburgh.

Preference No. 3.

Origin of note as follows :	
September 25, 1885, loan from Julius Lansburgh	200 00
Nov. 27, 1885, paid on above loan	50 00
Balance	150 00
Dec. 23, 1885, paid	75 00
Balance	75 00
Febr. 5, 1886, loan from Julius Lansburgh	100 00
	175 00

Febr. 5, 1886, gave note for this.

75 March 8, 1886, paid curtail on above note 40 00

Balance $135 00

March 9, 1886, gave note for this.

April 12, 1886, curtail on above note..... ..... 40 00

95 00

April 12, 1886, gave note for this.

May 14, 1886, curtail on above note..... 47 50

47 50

May 15, 1886, gave note for this.

Preference to Julius Lansburgh.

Preference No. 62.

For $518.98, origin of note as follows: For three of my notes and interest, payable to the order of Henry Franc, but said note held by Julius Lansburgh, will explain further in preference 63.

Gave note Febr. 6, 1886, for these three notes and interest, amounting to $364 98
Interest to May 10, 1886, on above note 5 66

$370 64

Paid curtail on above note May 10, 1886..... 100 00

Balance 270 64

May 10, 1886, Mr. Julius Lansburgh turned over to me 2 notes, which, with interest, amounted to..... 248 34

518 18

May 10, 1886, I gave my note for this amount.

Preference No. 63, to Julius Lansburgh, for 10 notes of $100.00 each, amounting to..... ..... $1,000 00

Origin of note as follows on next page.

76 Received from H. Franc.

Loans:

1879, April 9.....	1,000 00
1880, June 28	600 00
1880, Febr. 6.....	1,000 00
1880, July 15	500 00
1880, Aug. 19.....	500 00
1880, Aug. 30.....	500 00
1880, Nov. 3	250 00
1880, Nov. 8	250 00

Paid H. Franc:

1880, Aug. 19.....	1,100 00
1880, Sept. 30	500 00
1880, Oct. 18.....	500 00
1881, March 18.....	1,000 00
1883, Nov. 15	1,000 00
	$4,100 00

1880, Dec. 21.....	500 00
1880, Dec. 27.....	500 00
1881, Dec. 8.....	250 00
Total....	$8,100 00
Less paid	4,100 00
Balance	$4,000 00

So in November, 1883, I was indebted to Mr. Henry Franc in the sum of four thousand dollars, and, it being my wish of paying this sum in monthly instalments, Mr. Henry Franc accepted from me on December 8, 1883, forty notes of $100.00 each, all dated Dec. 8, 1883, and numbered from No. 1 to No. 40. I made first payment on note No. 1 Jan. 8, 1884, and paid to Mr. Henry Franc 17 notes of $100.00 each by check on Bank of Washington, when I was informed that the balance of said notes given by me were in the possession of Mr. Julius Lansburgh. Notes No. 18 to No. 30 were paid by me to Mr. Julius Lansburgh, and I am now indebted to him for notes numbered 31 to 40, of $100.00 each, amounting to $1,000 00

Preference No. 64 to Daily Post.

77 My note dated March 10, 1886, for advertising in said paper for three months, amount..... $200 00

Preference No. 65 to National Republican.

My note dated April 14, 1886, for advertising in said paper for three months from April 5, 1886, amount of note.. $160 00

Preference No. 66 to the Critic.

My note dated April 15, 1886, for advertising in said paper for 3 months from April 5, 1886, amount of note $130 00

Preference No. 67 to W. H. Slater.

My note to the order of W. H. Slater for loan dated March 5, 1886, amount..... .... $200 00
May 7, 1886, I gave renewal note for above.

Preference No. 68 to W. H. Slater.

My note to the order of W. H. Slater for loan dated May 11, 1886, amount $200 00

Preference No. 60 to L. Heller.

Balance on loan of April 6, 1883	$500 00
Paid by part of note given Nov. 2, 1885	200 00
Balance	300 00
Paid by part of note given Febr. 9, 1886	200 00
Balance	$100 00

Answer to Interrogatory No. 2.

March	22.	G. Mussbaum	132 50
"	17.	L. Grief and Bro.	621 00
April	12.	Morris and Solomon	73 62
March	24.	Morris and Solomon	254 87
Febr.	26.	M. Dean and Co.	242 75
May	4.	Chester and Smith Mfg. Co.	10 75
78 March	23.	Samuel White and Co.	13 50
Febr.	19.	Samuel White and Co.	20 25
March	6.	Samuel White and Co.	51 00
Febr.	16.	Samuel White and Co.	93 00
May	11.	The Harrell Mfg. Co.	12 00
May	6.	The Harroll Mfg. Co.	27 26
March	15.	Albright and Strindler	34 00
March	5.	Albright and Strindler	266 75
April	13.	Union Suspender Co.	110 85
April	13.	Union Suspender Co.	45 50
March	26.	Hood, Bonbright and Co.	259 75
April	18.	Hood, Bonbright and Co.	211 03
April	15.	Fechheimer, Goodkind and Co.	105 00
April	7.	Fechheimer, Goodkind and Co.	276 00
April	3.	Fechheimer, Goodkind and Co.	1,465 50
April	12.	Snedeker and Boynton	148 30
April	17.	Snedeker and Boynton	102 65
April	10.	Daniel Miller and Co.	183 50
April	16.	I. K. P. Pine	76 75
April	7.	I. K. P. Pine	78 40
April	30.	M. Friedman and Sons	67 50
April	21.	Herman Bendix	149 25
April	26.	Steiner and Son	65 50
April	29.	Louis Eshner and Bro.	164 00
April	16.	J. Goodhelp	124 75
April	1.	Hodges Bros.	34 05
Febr.	19.	Hodges Bros.	51 78
Febr.	19.	Hodges Bros.	331 32
April	1.	Hodges Bros.	132 17
March	17.	Cohen Ball and Co.	385 50
Febr.	26.	Cohen Ball and Co.	300 27
April	20.	Cohen Ball and Co.	80 50
March	31.	Koblenzer and Dazian	132 25
79 April	12.	Koblenzer and Dazian	40 50

April	16.	M. E. Wright	56 25
March	31.	M. E. Wright	50 00
March	15.	M. E. Wright	80 25
April	15.	W. W. Harrison	75 20
March	16.	W. W. Harrison	166 50
Febr.	23.	Lesser Bros.	503 55
March	16.	Lesser Bros.	255 00
April	8.	Lesser Bros.	139 38
May	7.	Joel I. Baily and Co., returned	22 50
April	28.	Joel I. Baily and Co.	22 50
April	8.	Joel I. Baily and Co.	96 75
March	27.	Joel I. Baily and Co.	46 00
March	2.	Joel I. Baily and Co.	229 00
April	22.	W. Lyndall Stevenson	48 00
April	2.	W. Lyndall Stevenson	208 00
April	9.	W. Lyndall Stevenson	74 00
April	21.	C. S. Marsten	63 00
April	9.	C. S. Marsten	131 00
March	12.	C. S. Marsten	159 25
April	28.	S. L. Newborg and Son	9 50
April	21.	S. L. Newborg and Son	193 75
April	12.	S. L. Newborg and Son	113 50
April	3.	Wilson Bros.	102 00
April	19.	Fellows and Co.	3 90
April	14.	Fellows and Co.	184 65
Febr.	25.	Bieman, Hiedelberg and Co.	276 00
March	29.	Bieman, Hiedleberg and Co.	166 25
April	26.	Gearry Bros.	67 50
April	24.	Gearry Bros.	67 50
Febr.	19.	S. Marcus	106 50
March	1.	S. Marcus	80 75
	April	7. Fried and Co.	64 00
80	March	12. Fried and Co.	237 00
	March	22. Fried and Co.	238 50
April	5.	Gunnison and Marvin	52 35
March	22.	Gunnison and Marvin	164 10
March	16.	M. Klugherz	9 92
March	6.	M. Klugherz	116 44
March	31.	Armstrong, Cator and Co.	80 00
March	10.	Armstrong, Cator and Co.	110 00
March	19.	Armstrong, Cator and Co.	86 25
April	28.	De Young and Gans	75 00
April	13.	De Young and Gans, returned 26.25	75 00
March	12.	De Young and Gans	139 63
March	30.	Huguenell and Bechlar	169 73
April	15.	Earl and Wilson	113 00
April	8.	Summit Rubber Co.	68 25
April	27.	Langfeld, Bros. and Co.	38 25
April	27.	Peter J. Schmaltz, returned 2.25	42 75
April	20.	Ward Mfg. Co.	55 50
April	14.	I. Harzberg and Co.	377 52

March	16.	Levi and Wechsler	121 50
May	7.	Williams, Shire and Co	182 00
March	2.	Edward Scheitlin and Co	176 73
April	16.	Sol- Miller and Co	352 25
March	10.	M. Schark	133 85
March	9.	Loeb and Waldheimer	430 00
April	12.	Hirsh, Frank and Co	187 00
April	24.	Blumenthal Bros. and Co	204 88
May	5.	I. A. Brown and Co	79 15
March	23.	William Taylor and Co	135 00
Febr.	27.	Baumer Bros	257 50
March	20.	E. S. Jaffray and Co	232 50
April	20.	E. S. Jaffray and Co	54 00
	April	9. E. S. Jaffray and Co	72 00
81	March	15. E. S. Jaffray and Co	182 79
	April	19. Wm. A. Brown and Co	160 75
Febr.	27.	Wm. A. Brown and Co	113 75
May	7.	I. S. Lowrey and Co	22 75
April	29.	I. S. Lowrey and Co	45 00
May	20.	I. S. Lowrey and Co	40 75
May	12.	S. B. and H. M. Lester	72 00
Febr.	25.	S. B. and H. M. Lester	147 00
March	5.	S. B. and H. M. Lester	48 00
March	18.	S. B. and H. M. Lester	130 50
March	20.	S. B. and H. M. Lester	78 75
March	15.	S. B. and H. M. Lester	94 25
March	13.	Thos. J. Mustin and Co	100 25
April	16.	Thos. J. Mustin and Co	40 50
April	13.	Thos. J. Mustin and Co	46 50
April	7.	Thos. J. Mustin and Co., returned O K	220 57
March	25.	Geo. B. Cluett, Bro. and Co	132 75
April	13.	Geo. B. Cluett, Bro. and Co	18 00
April	8.	Geo. B. Cluett, Bro. and Co	83 25
March	12.	Geo. B. Cluett, Bro. and Co	221 25
March	18.	Geo. E. Nichols and Co	109 38
March	29.	Geo. E. Nichols and Co	229 25
March	19.	Mamlock and Green	236 50
March	10.	Mamlock and Green	66 00
March	6.	Mamlock and Green	15 00
March	3.	Mamlock and Green	794 50
April	23.	L. Noar and Bro	78 55
March	29.	L. Noar and Bro	222 45
March	24.	Oppenheimer and Spagenthal	236 17
Febr.	26.	Coon and Co	78 50

Answer to Interrogatory No. 3.

	Oct.	13, 1885. Hirst and Bro	214 08
82	Dec.	9, 1885. Hirsh and Bro	69 07
	Dec.	11, 1885. Hirsh and Bro	21 00
Dec.	12, 1885.	Coon and Co	60 35
Jan.	22, 1886.	Coon and Co	34 35

Sept. 12, 1885.	Fechheimer, Goodkind and Co..	1,059 50	
Oct. 6, 1885.	Fechheimer, Goodkind and Co..	400 00	
Oct. 16, 1885.	Fechheimer, Goodkind and Co..	81 00	
		1,540 50	
	Less 2%	30 81	
		$1,509 69	
Oct. 26, 1885.	Fechheimer, Goodkind and Co..	1,130 00	
	Returned by mdse	60 00	
		1,070 00	
Oct. 27, 1885.	Fechheimer, Goodkind and Co..	234 00	
Oct. 30, 1885.	Fechheimer, Goodkind and Co..	150 00	
Nov. 2, 1885.	Fechheimer, Goodkind and Co..	105 00	
Dec. 1, 1885.	Fechheimer, Goodkind and Co..	5 50	
		1,564 50	
	Less 2½%	39 10	1,525 40
			3,035 09

The above indebtednesss to Fechheimer, Goodkind and Co. settled by notes dated Febr. 15, 1886:

I.	Note dated Febr. 15, 1886, 30 days	$535 09
II.	Note " " 15, " 60 "	500 00
III.	Note " " 15, " 90 "	1,000 00
IV.	Note " " 15, " 4 mo	1,000 00

Dec. 22, 1885.	Elias Apfelbamn	27 00
Nov. 27, 1885.	Lewis Gans and Bro	31 00
Jan. 18, 1885.	Levi and Wechsler	24 75
	I. Note to Fechheimer, Goodkind and Co., paid at 2nd Nat. bank March 20, 1886	538 52
	II. Note to Fechheimer, Goodkind and Co., paid at 2nd Nat. bank April 19, 1886	506 13
83	Paid Febr. 23, 1886, less 4%	25 92
	Paid March 16, 1886, less 3%	30 07
	Paid March 16, 1886, less 3%	23 76
Dec. 4, 1885.	Wm. M. Griffith and Co	76 50
Dec. 19, 1885.	Wm. M. Griffith and Co	60 00
Dec. 10, 1885.	Wm. M. Griffith and Co	38 50
Oct. 8, 1885.	Coon and Co	118 00
Nov. 13, 1885.	Coon and Co	45 15
Dec. 13, 1885.	Coon and Co	32 50
Dec. 4, 1885.	Coon and Co	47 00
Aug. 7, 1885.	Coon and Co	71 40
Aug. 21, 1885.	Coon and Co	41 50
Aug. 20, 1885.	Coon and Co	47 40
Sep. 30, 1885.	R. K. Davies and Co	248 51

Oct. 1, 1885.	R. K. Davies and Co.		166 50
Oct. 8, 1885.	R. K. Davies and Co.		28 42
Oct. 2, 1885.	R. K. Davies and Co.		6 75
Oct. 26, 1885.	R. K. Davies and Co.		74 50
Dec. 15, 1885.	R. K. Davies and Co.		469 64
Dec. 15, 1885.	R. K. Davies and Co.		63 50
Dec. 15, 1885.	R. K. Davies and Co.		21 00
Dec. 21, 1885.	R. K. Davies and Co.		22 50
June 13, 1885.	R. K. Davies and Co.	207 50	
June 17, 1885.	R. K. Davies and Co.	2 63	
			210 13
Sep. 14, 1885.	L. Greif and Bro.	$609 50	
Sep. 21, 1885.	L. Greif and Bro.	176 50	
			786 00
Febr. 12, 1886.	Geo. E. Nichols and Co.		21 88
M'ch 24, "	Earl and Wilson		32 00
M'ch 12, "	W. C. Sanderson		10 50
84	Gave note for bills Aug. 7, 20, 21; Dec. 7, 1885, and paid the same at Messrs. Riggs and Co. Febr. 10, 1886		$121 58
	Gave note to R. K. Davies and Co. for bills June 13 and 17, Oct. 31, 1885, and paid the same at Riggs and Co. Febr. 1, 1886		213 38
	Paid to L. Greif and Bro.—		
Febr. 15, 1886		$100 00	
Febr. 17, 1886		100 00	
Febr. 23, 1886		100 00	
March 10, 1886		100 00	
Febr. 27, 1886		100 00	
March 13, 1886		100 00	
March 23, 1886		186 00	
			$786 00
	Paid March 10, 1886, less descount		20 79
	Paid April 24, 1886, less discount		30 40
	Paid April 24, 1886, less discount		9 97
Oct. 1, 1885.	Jas. W. Lester and Co	12 00	
Oct. 3, 1885.	Jas. W. Lester and Co	82 50	
			94 50
Nov. 25, 1885.	Jas. W. Lester and Co	24 00	
Dec. 9, 1885.	Jas. W. Lester and Co	5 25	
			29 25
Oct. 30, 1885.	Heller and Sacks		65 84
Dec. 3, 1885.	Hodges Bros		73 50
March 17, 1886.	Standard Suspender Co.		23 83
Jan. 30, 1886.	Wm. M. Griffith and Co		7 25
Nov. 6, 1885.	I. Obendorfer and Co	246 47	
Nov. 7, 1885.	I. Obendorfer and Co	29 25	
		275 72	
	Less 3 %	8 27	
			267 45

Sept.	19, 1885. M. Keugherz		38 84
	Dec. 12, 1885. M. Keugherz		30 87
85	Oct. 22, 1885. C. S. Marsten		163 05
	Sept. 24, 1885. E. Scheitlin and Co., $181.03, less discount		173 79
Oct.	8, 1885. Hodges Bros	39 25	
Oct.	8, 1885. Hodges Bros	6 25	
		45 50	
	Less 2 %	91	
		44 59	
Oct.	22, 1885. Hodges Bros	91 00	
	Less 3 %	2 73	
		88 27	
			132 86
Paid Febr. 12, 1886, less discount, to Jas. W. Lester and Co			92 61
Paid Febr. 23, 1886, less discount, to Jas. W. Lester and Co			28 08
Paid at Riggs (included in note May 12, 1886)			65 84
Paid March 23, 1886, less discount			71 29
Paid April 24, 1886, less discount			22 64
Paid March 23, 1886, less discount			6 96
Gave note to I. Obendorfer and Co. for bills Nov. 6 and 7, 1885, and paid the same at the Nat. Met. bank April 9, 1886			270 73
Paid Febr. 12, 1886, less discount			38 06
Paid M'ch 23, 1886, less discount			29 94
Gave note to C. S. Marsten and paid the same at Nat. Met. bank M'ch 5, 1886			165 05
Gave note Jan. 2, 1886, and paid the same at Central Nat. bank March 5, 1886			175 91
Paid Febr. 12, 1886, Hodges Bros			132 86

Answer to Interrogatory No. 4.

86 The amount and character of goods in stock prior to March 1, 1886, consisted of gents' furnishing goods, hats and caps and clothing. As to value I cannot state. I have not taken stock for some time.

Answer to Interrogatory No. 5.

A list of my unpreferred creditors, with the amount due to each, appears in my answer to interrogatory No. two (2), and my answer to interrogatory No. three (3) shows the payment made on account of merchandise.

Answer to Interrogatory No. 6.

My answer to interrogatory No. three (3), together with the following items, are the payments made by me from Febr'y 1st, '86, to June 13th, '86:

Febr.	1. Paid at Riggs and Co. note given to R. K. Davies and Co.	213	38
Febr.	1. G. Desio	1	00
"	2. Insurance (S. Wolf)	6	00
"	" Paid at Central Nat. bank note given to L. Heller	295	65
"	" Freight		82
	5. Paid at Citizens' Nat. bank note given to Julius Lansburgh	363	29
	John A. Power	4	90
	6. Paid at Nat. Bank of Washington curtail on my discount note	25	00
	" Interest on above note	6	33
	" Jas. Travers, 13 payment on $1,000 note	20	00
	" Elias Travers (rent, mdse.)	43	96
	" Elias Travers (rent, cash)	61	54
	" Wages	51	00
	8. Gas bill	33	00
	R. R. tickets		25
	10. Paid at Riggs and Co. note given to Coon and Co.	121	58
	Sterman (tailor)	6	80

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Febr.	12. Paid at Nat. Bank of Washington curtail on note	25	00
	" Interest on above note	9	50
	" Elias Travers' note and interest	102	73
	" Elias Travers' note and interest	104	73
	" Elias Travers' note and interest	210	80
	" M. Keugherz	38	06
	" S. B. and M. H. Lester	92	61
	" L. Freidenrich	30	00
	" Hodges Bros.	132	86
	13. Paid at Riggs and Co. curtail on above note	25	00
	" Interest on above note	6	32
	" Jas. Travers, 14 payment on $1,000.00 note	20	00
	" Wages	51	00
	15. L. Greif and Bro.	100	00
	Insurance	21	00
	17. L. Greif and Bro.	100	00
	19. Paid to Elias Travers interest for note falling due Febr. 27, March 2, March 4, 14–17, 15–18, 17–20, 19–22, 27–30	43	05
	Expenses to visit E. Travers	1	50

	20.	Freight	2 70
	"	Jas. Travers, 15 payment on $1,000.00 note	20 00
	"	Wages	51 00
	23.	L. Greif and Bro.	100 00
	"	S. B. and H. M. Lester	28 08
	"	L. Freidenrich	1 56
	"	Elias Applebaum	25 92
	"	Paid Nat. Met. bank sight draft of L. Freidenrich	25 10
	"	R. K. Davies and Co.	45 00
	"	M. Menken	
Febr.	24.	L. Freidenrich	6 00
"	25.	Freight	2 20
88			
Febr.	26.	Paid Nat. bank of Washington curtail on dis. note	25 00
	"	Interest on above note	12 20
	"	Sterman (tailor)	7 20
	27.	L. Greif and Bro.	100 00
	"	Wages	51 00
	"	Jas. Travers, 16 payment on $1,000.00 note	20 00
		Freight	99
M'ch	1.	Frieght	1 98
	2.	John Keller	500
	"	Freight	60
	3.	Freight	2 74
	"	Store expenses	1 92
	4.	Paid at Riggs and Co. curtail on 2 notes	50 00
	"	Interest on above notes	14 90
	"	Buttons	40
	"	Freight	1 66
	5.	Paid at Central Nat. bank note given to E. Scheitlin and Co.	175 91
	"	Paid at Nat. Met. bank note given to C. S. Marsten	165 05
	"	Freight	2 48
	6.	Wages	51 00
	"	Elias Travers (rent, cash)	61 62
	"	Elias Travers (rent, mdse.)	43 88
	"	Jas. Travers, 17 payment on $1,000.00 note	20 00
M'ch	6.	Freight	50
	"	Fixing awning	75
	8.	Freight	85
	"	Gas bill	27 00
	"	Paid to Julius Lansburgh curtail note	40 96
89			
March	9.	Money returned to R. Milburn	8 00
	10.	Geo. S. Nichols and Co.	20 79
	"	L. Greif and Bro	100 00
	11.	Freight	3 25

	12.	Paid at Riggs and Co. curtail on note	25 00
	"	Interest on above note	2 36
	"	Freight	60
	13.	Elias Travers, 18 payment on $1,000.00 note	20 00
	"	John Henderson	22 00
	"	L. Greif and Bro.	100 00
	"	Freight	1 49
	"	M. Menke	45 00
	"	Wages	51 00
	15.	E. E. Jackson (lumber)	2 52
	16.	Levi and Wechsler	23 76
		Lewis Gans and Bro.	30 07
		Freight	75
	17.	Freight	1 19
		Sterman (tailor)	5 70
	18.	Freight	4 25
		Daily Post	91
	19.	Freight	2 15
M'ch	20.	Elias Travers, 19 payment on $1,000.00 note	20 00
	"	Paid at 2nd Nat'l bank note given to Fechheimer, Goodkind and Co.	538 52
	"	Wages	51 00
	23.	Wm. M. Griffith and Co.	6 96
		M. Keughery	29 94
		Hodges Brothers	11 29
		L. Greif and Bro.	186 00
	24.	P. H. Gunnell	33 50
		Armor (sign)	1 50
	26.	John Henderson	35 50
		Paid to Elias Travers interest on 7 notes	45 81

90

March	27.	Wages	51 00
		Elias Travers, 20 payment on $1,000.00 note	20 00
	29.	Paid at Nat. Bank of Washington curtail on note	25 00
April	1.	Paid at Nat. Met. bank curtail and int. on note	48 83
	2.	M. Menke	45 00
	3.	Elias Travers, 21 payment on $1,000.00 note	20 00
		Elias Travers (rent, mdse.)	45 83
		Elias Travers (rent, cash)	59 67
		Wages	51 50
		Paid at Central Nat. bank note to Browning and Middleton	53 99
April	7.	Gas bill	20 40
	8.	Sterman (tailor)	7 15
	9.	Paid at Nat. Met. bank note given to I. Obenderfer and Co.	270 73
	10.	Elias Travers, 22 payment on $1,000.00 note	20 00
	"	Wages	51 50
	12.	Paid to Julius Lansburgh	40 87

	13.	Paid at Central Nat. bank note given to S. J. Kaufman	201	43
		Wrapping paper	3	00
	15.	Paid at Nat. Bank of Washington note of I. B. Graves	26	00
	17.	Wages	53	50
	19.	Paid at Second Nat. bank note given to Fechheimer, Goodkind and Co.	506	13
	"	Jas. Travers, 23 payment on $1,000.00 note	20	00
	22.	Lumber	1	08
	23.	Paid at Riggs and Co. interest and curtail	28	67
	24.	Earl and Wilson	30	40
91				
April	24.	W. C. Sanderson	9	97
		Standard Suspender Co.	22	64
		Coon and Co.	2	37
		Wages	64	00
		Elias Travers, 24 payment on $1,000.00 note	20	00
	26.	Armor and Co. (sign)	6	50
	27.	Julius Hertzburg	209	51
	29.	Sterman (tailor)	8	40
May	1.	Paid at Nat. Met. bank my discount note and int.	276	76
	"	Elias Travers, 25 payment on $1,000.00 note	20	00
	"	Auerbach and Bro.	4	50
	"	Elias Travers (cash, rent)	64	40
	"	Elias Travers (mdse., rent)	41	10
	"	Wages	64	00
	4.	Easton and Rupp	3	30
		High School Journal	2	50
	6.	Paid at Nat. Bank of Washington curtail on note	25	00
	"	Interest on above note	5	88
	"	Firemen's Ins. Co.	25	50
	"	Paid at Nat. Bank of Washington my note due to Chas. Baum	250	00
	7.	Gas bill	18	90
	8.	Plate Glass Ins. Co.	11	51
		Elias Travers, 26 payment on $1,000.00 note	20	00
		Wages	64	00
	10.	Paid to Julius Lansburgh	100	00
	12.	Paid to Riggs and Co. curtail on note	25	00
	"	Interest on above note	5	87
	"	Paid at Nat. Bank of Washington curtail and int. on note	34	04
	"	Paid at Riggs and Co. note given to L. Heller.	267	96
	"	Elias Travers, int. on notes due during May	40	52
	14.	Julius Lansburgh, note	47	50
92				
	14.	Interest on above note		61

May	15.	Elias Travers, 27 payment on $1,000.00 note..	20 00
	17.	Chas. Baum	100 00
		Wages	64 00
	19.	M. Menke	45 00
	20.	Paid at Nat. Met. Bank of Washington curtail on discount note	25 00
		Interest on above note	11 75
	22.	Wages	64 00
		Elias Travers, 28 payment on $1,000.00 note..	20 00
		Chas. Baum	250 00
		E. Morrison	1 50
	24.	High School Journal	2 50
	26.	Paid at Nat. Bank of Washington curtail on note	25 00
		Interest on above note	1 53
	28.	Paid at Riggs and Co. curtail on note	25 00
		Interest on above note	4 96
		Paid at Riggs and Co.	25 00
		Interest on above note	9 05
	29.	Wages..	64 00
		Elias Travers, 29 payment on $1,000.00 note..	20 00
		Chas. Baum	150 00
June	3.	Paid at Riggs and Co. curtail on note	25 00
	"	Interest on above note	4 97
	"	High School Journal	2 50
	"	Easton and Rupp	40
	5.	Elias Travers, 30 payment on $1,000.00 note..	20 00
	"	Chas. Baum	130 00
	"	Elias Travers (rent, cash)	14 15
	"	Elias Travers (rent, mdse.)	91 35
	"	John A. Power	1 25
	"	Insurance (S. Wolf)	21 00
	"	Wages	64 00
93			
	7.	Elias Travers interest on 4 notes during June.	20 30
	9.	Paid at Riggs and Co. curtail on note	25 00
	10.	Paid at Nat. Bank of Washington curtail on note	25 00
		Interest on above note	12 10
		Paid at Riggs and Co. curtail on note	25 00
		Interest on above note	2 89
	11.	Paid at Riggs and Co. curtail on note	25 00
		Interest on above note	4 28
	12.	Elias Travers, 31 payment on $1,000.00 note..	20 00
		Wages	64 00
		High School Journal	2 50
		Chas. Baum	235 00

Answer to Interrogatory No. 7.

From Elias Travers, Febr. 12, for notes $1,000.00, paid out by me as follows:

Febr.	12.	Paid at Bank of Washington curtail and int. on note	34 50
	"	Elias Travers, for note and int	102 73
	"	Elias Travers, for note and int	104 73
	"	Elias Travers, for note and int	210 80
	"	M. Kluegherz	38 06
	"	S. B. and M. H. Lester	92 61
	"	L. Freidenrich	30 00
	"	Hodges and Bro	132 86
	13.	Riggs and Co., curtail on note	31 32
	"	Elias Travers, 14 payment	20 00
	"	Wages	51 00
	15.	L. Greif and Bro	100 00

From Chas. Baum, Febr. 3, for note $250.00, paid out by me as follows: To take up note given to L. Heller, due at Central Nat. bank Febr. 3rd.

From Riggs and Co., Febr. 23, for note $300.00, paid out by me as follows:

94

Febr.	23.	L. Greif and Bro	100 00
	"	S. B. and H. M. Lester	28 08
	"	Justus Hollander	50 00
	"	L. Freidenrich	1 56
	"	Elias Applebaum	25 92
	"	Paid at Nat. Met. bank sight draft of L. Freidenrich	25 10
	"	R. K. Davies and Co	12 43
	"	M. Menke	45 00

From W. H. Slater, March 5, for note $200.00, paid out by me as follows:

March	5.	Paid at Central Nat. bank note given to E. Scheitlin and Co	175 91

From Bank of Washington, March 23, for note $850.00, paid out by me as follows:

March	23.	Wm. M. Griffith and Co	6 96
	"	M. Klugherz	29 94
	"	Hodges Bros	71 29
	"	L. Greif and Bro	186 00
	24.	Jacob Brock	150 00
	"	Theodore Hollander	90 00
	"	H. Hollander	115 00
	"	R. H. Gunnell	33 50
	"	Armor	1 50

26.	John Henderson	35 50
"	Elias Travers, int. on note	45 81

From Riggs and Co., April 26, for note $350.00, paid out by me as follows:

April 27.	Julius Hertzburg	209 57
" 30.	Drawn by myself to pay note due at Nat. Met. bank	165 00

95

From Riggs and Co., March 10, for note $275.00, paid out by me as follows:

March 10.	Geo. E. Nichols and Co.	20 79
"	L. Greif and Bro.	100 00
12.	Paid at Riggs and Co., curtail and int. on note.	27 36
13.	Elias Travers, 18 payment	20 00
	John Henderson	22 00
	L. Greif and Bro.	100 00

From Nat. Met. bank, May 5, for note $200.00, paid out by me as follows:

May 6.	Paid curtail on note at Nat. Bank of Washington	25 00
	Interest on above note	5 88
	Firemen's Insurance Co.	25 00
	Paid Nat. Bank of Washington on account of note due at Bank of Washington to Chas. Baum	140 00

From W. H. Slater, May 11, for note $200.00.

Deposited the above $200.00 at Riggs and Co. and used to take up note given to L. Heller, due May 12, at Riggs and Co.

Answer to Interrogatory No. 8.

Sales during February:

1. 2755.
2. 4767.
3. 5486.
4. 2404.
5. 2669.
6. 11028.
8. 4826.
9. 3895.

96

10. 3004.
11. 2825.
12. 2239.
13. 9064.
15. 4812.
16. 2199.

17. 12706.
18. 2219.
19. 1612.
20. 6736.
22. 971.
23. 3698.
24. 3447.
25. 2995.
26. 2189.
27. 12 396.

Sales during March:

1. 3814.
2. 9293.
3. 11134.
4. 5136.
5. 7249.
6. 18216.
8. 1934.
9. 1867.
10. 1493.
11. 3308.
12. 3446.
13. 9423.
15. 7206.
16. 5072.
17. 2981.

97

18. 5896.
19. 4116.
20. 7890.
22. 4568.
23. 1975.
24. 3248.
25. 3905.
26. 1865.
27. 6423.
29. 2347.
30. 2450.
31. 5220.

Sales during April:

1. 11813.
2. 6123.
3. 18215.
5. 3193.
6. 2262.
7. 5193.
8. 1939.
9. 3638.

10. 15739.
12. 7339.
13. 2040.
14. 4577.
15. 8692.
16. 6540.
17. 15976.
19. 5160.
20. 4386.
21. 7304.
22. 3379.

98

23. 7831.
24. 24149.
26. 6143.
27. 2459.
28. 2566.
29. 7506.
30. 5494.

Sales during May:

1. 26669.
3. 7471.
4. 4294.
5. 4275.
6. 6272.
7. 6512.
8. 13704.
10. 4277.
11. 5011.
12. 3729.
13. 6069.
14. 6766.
15. 14123.
17. 11397.
18. 1609.
19. 5101.
20. 2646.
21. 5540.
22. 19819.
24. 5867.
25. 5333.
26. 4337.
27. 3692.
28. 2981.
29. 21292.
31. 1387.

99 Sales during June to the 15:

1. 9441.
2. 7801.
3. 4929.
4. 5282.
5. 21448.
7. 5617.
8. 7087.
9. 4131.
10. 4164.
11. 2591.
12. 11664.
14. 6591.

Answer to Interrogatory No. 9.

Willie, James, Theodore, and Edward Hollander are brothers to Justus Hollander.

Chas. Baum, no relative.

A. Kaufman, brother-in-law.

Julius Lansburgh, no relative.

JUSTUS HOLLANDER.

I, Justus Hollander, on oath do depose and say I have heard read the foregoing answers to interrogatories by me subscribed and know the contents thereof; that the facts therein stated are true, as I verily believe.

JUSTUS HOLLANDER.

Subscribed and sworn to before me this eleventh day of February, A. D. 1889.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Assistant Clerk.

100 *Separate Answer of Defendant Jas. Hollander.*

Filed March 30, 1889.

In the Supreme Court of the District of Columbia.

FECHHEIMER *et al.* *vs.* HOLLANDER *et al.* } No. 10107. Equity.

Separate answer of defendant James Hollander.

This defendant, by protestation, not confessing or admitting any of the matters and things in the bill herein to be true as the same are therein set forth, for answer to so much and to such parts as he is advised it is necessary and material for him to answer, makes answer and says:

This defendant admits the truth of the allegations contained in paragraphs 1, 2, and 4 of said bill.

He has no knowledge of the matters set out in paragraphs 3, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, and 26, and can neither admit nor deny the same. Should they be considered material he demands strict proof thereof.

Answering paragraph 11th, this defendant says he has no knowledge of the matters therein averred excepting, however, the allegations respecting the preference to this defendant. In regard thereto defendant says that at the time of executing said assignment his brother, Justus Hollander, was indebted to respondent in the sum of five hundred and sixty-four $\frac{40}{100}$ dollars for services rendered, cash loaned, and building association stock, not merchandise, as intimated in said bill, sold by respondent to said Justus, as will more fully appear by the answer of said Justus to the interrogatories filed by complainants, and which answer, with respect to the preference to this defendant, he adopts as part of this his answer. Defendant avers that the amount preferred to him was actually and *bona fide* due as aforesaid, and said debt was not fraudulent. He
101 further says that he has been paid said amount by the assignee under said deed and has no further interest thereunder; and now, having fully answered, he prays to be hence dismissed.

JAMES HOLLANDER.

I, James Hollander, on oath depose and say that I have heard read the foregoing answer by me subscribed and know the contents thereof; that the facts stated therein upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

JAMES HOLLANDER.

Subscribed and sworn to before me the 29th day of January, A. D. 1889.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Assistant Clerk.

Separate Answer of Defendant Theodore Hollander.

Filed March 30, 1889.

In the Supreme Court of the District of Columbia.

FECHHEIMER *et al.* *vs.* HOLLANDER *et al.* } No. 10107. Equity.

Separate answer of defendant Theodore Hollander.

This defendant, by protestation, not confessing or admitting any of the matters and things in the bill herein contained to be true as

the same are therein set forth, for answer to so much and to such parts as he is advised it is necessary and material for him to answer, makes answer and says:

I admit the allegations contained in paragraphs one, two, and four of said bill to be true.

102 I have no knowledge of the truth of the matters set forth in the third, fifth, sixth, seventh, eighth, ninth, eleventh, and sixteenth paragraphs, and can neither admit nor deny the same. Should they be considered material I require strict proof thereof.

I believe the averments of paragraph ten are substantially true.

Answering paragraph twelve, I am informed and believe that Elias Travers is preferred in said assignment in the sum of sixty-seven hundred and eighty instead of sixty-three hundred and eighty dollars, and that this sum is made up of a large number of small notes. I was surety upon most all of these notes for the accommodation of my brother, Justus Hollander, and I received no benefit from said endorsements whatsoever, and had I been called upon to pay the same I would have been unable to do so. I am informed and believe that said notes were all settled by the assignee.

13. Answering paragraph thirteen, I say I have no knowledge of the facts therein averred except as to the note therein mentioned as the 4th preference in favor of the Bank of Washington, amounting to six hundred and twenty-five $\frac{00}{100}$ ($625) dollars. I executed this note for the accommodation of my brother Justus, and at its maturity, the assignee not being prepared to pay it, I was compelled to liquidate the same. The assignee afterwards paid me the amount due thereon. I know nothing about the other notes in said paragraph mentioned.

14. I have no knowledge of the matters and things averred in paragraph fourteen except as to the eigtheenth preference therein mentioned to Messrs. Riggs and Co. I endorsed the note therein described also for the accommodation of my brother Justus, and at its maturity paid the same. The amount thereof was subsequently paid me by said assignee.

15. The note described in paragraph fifteen was also endorsed by me for the accommodation of my said brother Justus. It

103 was paid at its maturity by said assignee.

16th. I admit that the assignment shows an aggregate indebtedness to the banks of forty-five hundred and fifty dollars. As to the allegations of insolvency and the visit of complainants' representative or the alleged concealments of money I know nothing and can neither admit or deny them, and if they are material I require strict proof thereof.

17th, 18th, -nd 23d. I deny that the endorsers upon all the notes held by said bank are relatives of said Justus. Answering for myself, I deny that I was intimate with his business affairs. I deny that I knew or had any reason to know that he was insolvent or that he was defrauding the plaintiffs and other dealers from whom he was purchasing goods. I endorsed and had been in the habit of endorsing notes for his accommodation as I had for other business

men, but I do not believe that said Justus ever had any intention of defrauding any one, either in executing said deed of assignment or otherwise. I am informed that said deed is valid and effective and is not void or fraudulent. I accepted under its provisions and ask that its trusts be executed.

19th, 20th, 21st, and 22nd. I can neither admit nor deny the truth of the allegations therein contained and require strict proof thereof.

23rd. I am informed and believe that said deed is not defective or void because of the reasons set out in this paragraph.

24th. I admit that the preferred creditors mentioned in paragraph twenty-four have sureties upon the notes held by them, but I do not know whether the loans made by them were made specially upon their responsibility. Answering for myself, I deny that complainants or any other of the unsecured creditors have a stronger equity than the preferred creditors as to the assigned property.

25th and 26th. I have no knowledge as to the matters set out in paragraphs 25 and 26 and can neither admit nor deny the
104 same, and if they should be considered material demand strict proof thereof.

And now, having fully answered, I pray to be hence dismissed with my proper costs.

THEODORE HOLLANDER.

I, Theodore Hollander, on oath do depose and say that I have heard read the foregoing answer by me subscribed and know the contents thereof; that the facts stated therein upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

THEODORE HOLLANDER.

Subscribed and sworn to before me the 26th day of January, A. D. 1889.

[SEAL.] C. S. CURTIS,
Notary Public, Lucas County, Ohio.

Separate Answer of Defendant Edward Hollander.

Filed March 30, 1889.

In the Supreme Court of the District of Columbia.

FECHHEIMER *et al.*
vs.
HOLLANDER *et al.* } No. 10107. Equity.

Separate answer of defendant Edward Hollander.

This defendant, by protestation, not confessing or admitting any of the matters and things in the complainants' bill herein to be true as the same are therein set forth, for answer to so much and to such parts as he is advised it is necessary and material for him to answer, makes answer and says:

I admit to be true the allegations of paragraphs 2, 4, and 10 of said bill.

I have no knowledge of the facts averred in paragraphs 1,
105 3, 5, 6, 7, 8, 9, 11, 12, 13, 15, 16, 18, 19, 20, 21, 22, 23, 25, and 26, and can neither admit or deny the same. If they are deemed material I will require strict proof thereof.

14th. Answering paragraph fourteen, I know nothing as to the notes therein mentioned except as to preferences fifteen and thirty-four. These notes were endorsed by me for the accommodation of my brother Justus. I received no benefit from said notes whatsoever.

17th. I admit that I am a brother of said Justus Hollander, but I deny that I was intimate with him or knew or had means to know that he was insolvent or that he was defrauding any person whomsoever, nor do I believe he ever did or that he ever intended to defraud any person.

24th. I admit that the said banks have sureties on the notes held by them. Answering for myself, I say I am not good for the amount of the notes endorsed by me and held by Messrs. Riggs and Co. and could not pay the same if called on so to do.

And now, having fully answered, I pray to be hence dismissed.

EDWARD HOLLANDER.

LEON TOBRINER,
For Defendant.

I, Edward Hollander, on oath depose and say that I have heard read the foregoing answer by me subscribed and know the contents thereof; that the facts stated therein upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

EDWARD HOLLANDER.

Subscribed and sworn to before me this 31st day of January, A. D. 1889.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Assistant Clerk.

106 *Answer and Account of Samuel Bieber, Assignee.*

Filed March 30, 1889.

In the Supreme Court of the District of Columbia.

FECHHEIMER, GOODKIND AND CO. *vs.* SAMUEL BIEBER *et al.* } No. 10107. Equity.

Separate answer of defendant Samuel Bieber to the bill of complaint against him and others herein exhibited.

This defendant, by protestation, not confessing or admitting any of the matters and things in said bill to be true as they are therein

set forth, for answer to so much and to such parts as he is advised it is necessary and material for him to answer, makes answer and says:

1st, 2nd, and 3rd. This defendant admits the truth of the allegations contained in paragraphs one, two, and three of complainants' bill.

4th. He admits that his codefendant Justus Hollander has for several years prior to the filing of said bill been engaged in the clothing business in this city. He has no knowledge of the fact of insolvency during the time alleged in said bill. He admits that said Hollander on the 15th day of June, A. D. 1886, executed a deed of assignment as set out in paragraph four of said bill.

5th. Answering paragraph five, he says that the property of said assignor is fully and sufficiently described in said deed. He is informed and, so far as he has been able to ascertain, said assignor had no real estate or interest in real estate whatsoever; that the only property he was possessed of was the stock in trade and fixtures in store No. 1217 Pennsylvania avenue northwest, in this city, and the accounts pertaining thereto and some exempt household furniture,
all of which, with the exception of said household furniture,
107 came into the hands of this defendant and were duly administered. Defendant is informed by counsel that said deed is not fraudulent and void because of the want of a description or accompanying schedule.

6th. Answering paragraph six, defendant says that the printed statement of which Exhibit "C" is a copy was, after having been sent to several creditors, discovered to be erroneous in several items, although the "totals" of the colum-s were correct, and thereupon a corrected statement was sent to said creditors. Defendant files with his answer a corrected statement.

7th. Defendant on information and belief admits the averments of paragraph seven to be true.

8th and 9th. This defendant has no knowledge of the facts set forth in paragraphs eight and nine charging a fraudulent intent in the purchase of said goods, and can neither admit nor deny the same, and if material he demands strict proof thereof. As to the identity of the goods purchased by defendant Justus Hollander from complainants he says that said goods could easily have been identified and selected from the other goods in said store. He denies that at the time of the assignment there were on hand in said establishment a large quantity of the stock of the last spring purchases from said complainants; on the contrary, the stock of clothing was mostly winter or old stock.

10th. The preferred debts are substantially set forth in paragraph ten.

11th. This defendant says that the exact amount of the preferences under said deed are fourteen thousand seven hundred and forty-four $\frac{71}{100}$ dollars. The unpreferred debts amount to twenty-four thousand two hundred and seventy-six $\frac{22}{100}$ dollars. Defendant from investigation believes the preferences to Willie and James Hollander to be *bona fide*.

12th. The preferences to the defendant Travers *is* for sixty-seven hundred and eighty dollars instead of sixty-three hundred and eighty dollars, as alleged they were, as this defendant ascer-
108 tained, for money loaned and advanced by said Travers to said Justus Hollander.

13th. The preferences to the National Bank of Washington are, as defendant has learned, for money loaned by said bank to said Justus Hollander.

14th. The preference- to Messrs. Riggs and Co. are, as defendant has also learned, for money loaned by them to said Justus Hollander.

15th. The preference referred to in paragraph fifteen is, as your respondent is informed and believes, for money loaned by said National Metropolitan bank to said Justus Hollander.

16th and 17th. Defendant admits that the preferences to the banks mentioned in paragraph sixteen amount to forty-five hundred and fifty dollars. He has no knowledge of the other matters therein and in the seventeenth paragraph averred and can neither admit -or deny the same, but should they be considered material demands strict proof thereof.

18th. The eighteenth paragraph, defendant is informed by counsel, contains a proposition of law which is bad.

19th, 20th, and 21st. The preferences mentioned in paragraphs nineteen and twenty made to Julius Lansburgh and Louis Heller are truly set forth. Defendant is informed they are *bona fide* and not void. The preferences to the newspapers are, as defendant has ascertained, for advertising lately done.

22nd. The preference- to W. H. Slater are, your defendant is informed, for money loaned by him to said Justus Hollander.

23rd. Defendant is advised that said deed is not void because it contains a provision empowering him to appoint one or more attorneys under him in the execution of the trusts of said deed. He is informed that such a clause is usual and proper in all deeds of assignment and necessary for the due administration of the estate.

24th. Defendant is advised that he is not required to an-
109 swer the averments of paragraph twenty-four.

25th. Defendant admits that he took immediate possession of the assets and property of defendant Justus Hollander, and that he began to and did dispose of said stock and assets. He files herewith a copy of his accounts as such assignee, setting out all monies received and paid out. He admits that he gave no bond, but was not required by any creditor to do so. He avers that he is fully responsible.

26th. Answering paragraph twenty-six, this defendant says he admits that he is engaged as a clothing merchant on his own account, but he denies that this or his other business enterprises prevented him from giving his attention to the due administration of said trust. On the contrary, he avers that throughout the whole time he was administering said trusts he gave the whole of his time and attention thereto. He denies that the execution of said deed has been conducted in the interests of said Justus Hollander. This

defendant was aware that he was a trustee for the benefit of creditors of said Hollander. He avers that his whole efforts were to realize as much as possible for them. He accepted the trusts of said deed in good faith. He had no knowledge or notice of any fraudulent act or conduct on the part of said Hollander, and he now believes, as he did at the time of said acceptance, that the said deed of assignment was but an honest effort to pay honest debts.

And now, having fully answered, he prays to be hence dismissed with his proper costs.

SAMUEL BIEBER.

LEON TOBRINER,
Solicitor for Defendant.

I, Samuel Bieber, on oath depose and say I have heard read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated of my personal knowledge are true and those stated on information and belief I believe to be true.

SAMUEL BIEBER.

110 Subscribed an- sworn to before me this — day of January, A. D. 1889.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

EXHIBIT.

WASHINGTON, D. C., *June* 25, 1886.

GENTLEMEN: I herewith present my first report as assignee of Justus Hollander, of No. 1217 Penna. Ave. N. W., this city:

Total indebtedness		$29,020 93
Preferred debts as follows:		
Elias Travers	$6,780 00	
Nat. Bank of Washington	2,325 00	
Riggs and Co	2,025 00	
Nat. Met. bank	200 00	
Willie Hollander	293 83	
Jas. Hollander	564 40	
Nat'l Republican	160 00	
Julius Lansburgh	1,566 48	
Evening Critic	130 00	
Washington Post	200 00	
W. H. Slater	400 00	
Lewis Heller	100 00	
	$14,744 71	
Assets.		
Stock appraised at		$17,594 33
Fixtures appraised at		263 00
Book accounts, $713.05, worth about		300 00
		$18,157 33

Respectfully submitted.

SAMUEL BIEBER, *Assignee.*

111 *Account of Samuel Bieber, Assignee of Justus Hollander.*

Filed March 30, 1889.

June	15.	To cash from sales.....	$56 42		
	16.	" " "	51		
	17.	" " "	110		
	18.	" " "	95 50		
	19.	" " "	169		
	21.	" " "	35		
	22.	" " "	60		
	23.	" " "	55		
	24.	" " "	40		
	25.	" " "	50		
	"	" " from Bank of Washington.	12 61		
	"	" " " Riggs and Co. ...	18 07		
	26.	" " " sales.....	219		
	28.	" " "	130 65		
	29.	" " "	80		
	30.	" " "	100		
July	1.	" " "	110		
	2.	" " "	60		
	3.	" " "	251 32		
	5.	" " "	75		
	6.	" " "	80		
	7.	" " "	86 30		
	8.	" " "	160		
	9.	" " "	79 20		
	10.	" " "	279		
	12.	" " "	75		
	13.	" " "	60		
	14.	" " "	40		
	15.	" " "	60		
	16.	" " "	90		
112					
	17.	" " "	209 50		
	19.	" " "	60		
					$3,057 57
July	20.	To cash from sales.....	40 00		
	21.	.....	40		
	22.	.....	46 40		
	23.	.....	45		
	24.	.....	149		
	26.	.....	55		
	27.	.....	50		
	28.	.....	70		
	29.	.....	60		
	30.	.....	100		
	31.	.....	311 50		

Aug.	2.	....	106		
	3.	....	55		
	4.	....	80		
	5.	.....	60		
	6.	.....	55		
	7.	.....	151	40	
	9.	.....	65		
	10.	.....	58	40	
	11.	.....	30		
	12.	.....	41	35	
	13.	.....	35		
	14.	.....	213	30	
	16.	.....	65		
	17.	.....	60		
	18.	.....	45		
	19.	.....	55		
	20.	.....	35		
	21.	.....	161		
	23.	.....	35		
	24.	.....	35		
113					
	25.	.....	55		
	26.	.....	50		
	27.	.....	30	20	
	28.	.....	124		
					$2,667 75
					$5,725 12
	30.	.....			
	" To cash from sales	.....	35	00	
	31.	....	50	00	
Sept.	1.	.....	32	85	
	2.	.....	45		
	3.	....	30		
	4.	.....	162	30	
	6.	.....	30	30	
	7.	.....	20		
	8.	.....	25	95	
	9.	.....	20		
	10.	.....	34	16	
	11.	.....	121	50	
	13.	.....	40		
	14.	.....	20		
	15.	....	25		
	16.	.....	25		
	17.	.....	25		
	18.	.....	100	25	
	20.	.....	40		
	21.	.....	25		
	22.	.....	25		
	23.	.....	25		

	24.	....	30	
	25.	.....	101 50	
	27.	.....	30	
	28.	.....	30	
	29.	....	40	
114				
	30.	... .	36	
Oct.	1.	... .	35	
	2.	....	218 50	
	4.	.....	80	
	5.	.....	35	
	6.	.....	40	
	7.	.....	30 50	
	8.	.....	25 00	
				$1,688 51
				$7,413 63
Oct.	9.	To cash from sales.....	129 50	
	11.	.....	25	
	12.	.....	20	
	13.	.....	25	
	14.	.....	30	
	15.	.....	25	
	16.	.. ..	177 80	
	18.	.....	55	
	19.	.....	30	
	20.	.....	20	
	21.	... .	25	
	22.	....	20	
	23.	.....	109	
	25.	.....	20	
	26.	.....	20	
	27.	.....	40	
	28.	.....	30	
	29.	.....	30	
	30.	.....	129	
Nov.	1.	....	50	
	2.	.....	39 25	
	3.	... .	25	
	4.	... .	25	
	5.	.....	25	
	6.	.....	121 25	
115				
	8.	.....	20	
	9.	.....	25	
	10.	.....	55	
	11.	....	30	
	12.	.....	25	
	13.	.....	116 50	
				$1,517 30
				$8,930 93

Nov.	15.	Cash from sales, $30.00; from Price, $42.00	72 00	
	16.		25	
	17.		38 50	
	18.		25	
	19.		21 05	
	20.		111 50	
	22.		20	
	23.		25	
	24.		25	
	26.		20	
	27.		111 50	
	29.		30	
	30.		25	
Dec.	1.		25	
	2.		20	
	3.		20	
	4.		111 60	
	6.		20	
	7.		20	
	8.		18	
	9.		22	
	10.		20	
	11.		106 50	
	13.		30	
	14.		25	
	15.		45	
116				
	16.		25	
	17.		25	
	18.		108 50	
	20.		35	
	21.		30	
	22.		50	
				$1,306 50
				$10,237 08
Dec.	23.	To cash from sales	70	
	24.		155 50	
	27.		25	
	28.		40	
	29.		20	
	30.		25	
	31.		55 50	
1887.				
Jan'y	3.		25	
	4.		20	
	5.		25	
	6.		20	
	7.		25	
	8.		65	

	10.	....	20	
	11.	.....	25	
	12.	....	20	
	13.	. .....	25	
	14.	... .	20	
	15.	.....	79	
	17.	.....	20	
	18.	.....	18	
				798 50
				$11,035 38
	From sales in bulk.....			5,036 00
	Total receipts.....			$16,071 58

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June	15.	By cash paid notary public	50	
	"	Rec'd'g assig't.....	6 50	
	"	Stationery	50	
	"	Signs	4 75	
	16.	Stamps, &c., creditor's notice....	2 50	
	19.	Wages	69 00	
	"	Willie Hollander, pref'nce No. 1.	293 83	
	21.	Jno. F. Cook, personal tax.....	56 70	
	25.	James Hollander, pref. No. 2....	200	
	26.	Wages	69	
	28.	Twine.....	40	
	"	Printing statements, stamps, &c..	5 00	
	"	R. R. tickets.....	25	
	29.	Jas. Hollander, pref. No. 2	200	
July	3.	Wages	69	
	"	Steerman (tailor)	5	
	"	Car tickets.....	1	
	"	Wrapping paper and cord	1 32	
	1.	Julius Lansburgh, pref. No. 3 ...	47 50	
	2.	Jas. Hollander, pref. No. 2.....	164 40	
	3.	Elias Travers, prefs. Nos. 4 & 5..	208 80	
	6.	Saks and Hamburger, appraisers.	40	
	"	Joseph Travers, ag't, rent	105 50	
	"	Nat'l Met. bank, pref. No. 7	202 45	
	7.	Gas bills.....	8 85	
	"	Ice "	2 45	
	9.	Paper (Geo. I. Hill).....	8 20	
	10.	Wages	89 00	
	"	Elias Travers, pref. No. 6.....	213 46	
	12.	Julius Lansburgh	374 43	
	14.	Julius Lansburgh	150	
				$2,600 29

118				$2,600 29
July	17. Wages	89		
	" Stearman	5		
	" R. R. tickets		50	
	21. Elias Travers, prefs. 8 & 9	315	53	
	22. Stearman	6	40	
	24. Wages	89		
	" Travers, prefs. 10 & 11	208	80	
	27. " " 12	103	40	
	29. Nat. Bank of Wash., pref. 17	101	23	
	31. Wages	91	50	
	" Stearman	5		
Aug.	7. Wages	91	50	
	" Stearman	4	90	
	10. Gas bill	8	40	
	12. Ice	1	35	
	14. Wages	91	50	
	" Signs	5		
	" Easton and Rupp	1	80	
	7. Rent	105	50	
	10. Leon Tobriner	200		
	21. Wages	91	50	
	" Stearman	5		
	27. R. R. tickets		25	
	" Awning repairs	4	95	
	28. Wages	79		
	" Stearman	5		
Sep.	1. Wrapping paper	7	85	
	4. Steerman	5		
	" Ice	1	30	
	" Wages	86		
	5. Travers, pref. 13	105	50	
	8. Gas	10	95	
	10. Feather dusters	2	76	
	" Nat'l Republican (advst'g)	4	40	
				1,934 77
				$4,535 06
119				$4,535 06
Sep.	10. Easton and Rupp	2	00	
	11. Steirman	5		
	" Wages	91	50	
	18. "	85	25	
	" Steirman	3		
	25. Wages	91	50	
Oct.	2. "	91	50	
	" Plumbing	4		
	" Stearman	3		
	" Rent	105	50	

	7.	Gas bill	10 50	
	9.	Wages	91 50	
	"	Sterman	3	
	16.	Wages	91 50	
	"	Ice	1 30	
	"	Sterman	5	
	23.	Wages	91 50	
	"	Sterman	3	
	30.	"	3	
	"	Wages	91 50	
Nov.	1.	Ice	1 25	
	"	Rent	105 50	
	6.	Wages	91 50	
	"	Plumber	2	
	"	Gas	12 75	
	13.	Wages	91 50	
	"	Sterman	5	
	17.	Coal	10 50	
	19.	Armor and Co. (signs)	2 50	
	"	Steirman	3 55	
	20.	Wages	91 50	
	"	E. H. Smith	5	
	27.	Wages	91 50	
120				
Dec.	4.	Wrapping paper	3 10	
	"	Roof repairs	2 00	
				1,393 20
				$5,928 26
Dec.	4.	Stearman	5 00	
	"	Wages	91 50	
	"	Rent	105 50	
	6.	Gas	15	
	11.	Wages	91 50	
	18.	"	91 50	
	"	Steirman	7 00	
	24.	Wages	91 50	
	"	Repairs, awning	4	
	31.	Steirman	5	
	"	Easton and Rupp	2	
	"	Wages	91 50	
1887.				
Jan'y	4.	Rent	105 50	
	5.	Gas	18 75	
	"	Wages	91 50	
	"	Steirman	3	
	11.	Store repairs	3 50	
	12.	Coal	5 25	
	15.	Wages	91 50	
	"	Steirman	5 70	

	19. Elias Travers, in settlement of preferences Nos. 13, 14, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 36, 37, 38, 39, 40, 41, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53, 54, 56, 57, 58, 59.....	2,566 51	
	" Pref. No. 18.....	314	
	" " " 35.....	653 22	
	" Wages, 3 days to Jan'y 19, '87...	45 25	
	Commissions.....	1,200 00	
	Att'ys' fees.....	350	
121	Rent, 20 days	70	
	Costs in equity cause No. 10107, Fechheimer *et al*.....	1 35	
			$6,126 03
			$12,054 29

Answer of Defendant Julius Lansburgh.

Filed March 30, 1889.

In the Supreme Court of the District of Columbia.

FECHHEIMER, GOODKIND AND CO. *vs.* JUSTUS HOLLANDER *et al.* } No. 10107. Equity.

Separate answer of defendant Julius Lansburgh.

This defendant, by protestation, not confessing or admitting any of the matters or things in said bill to be true as they are therein alleged, for answer to so much and to such parts as he is advised it is necessary and material for him to answer, makes answer and says:

He admits the averments of paragraphs 1, 2, and 4 of said bill.

He has no knowledge of the facts alleged in paragraphs 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 18, 20, 21, 22, 23, 24, 25, and 26 of said bill and can neither admit or deny the same. Should they be material he demands strict proof thereof.

14th, 17th, and 19th. He admits that he is preferred under the deed of assignment mentioned in said bill as set forth in paragraph nineteen (19) thereof, but he denies that said preferences are fraudulent or void. He avers that at the time of the execution of said deed said Hollander was justly indebted to him in the amounts of said several notes, the history of which *are* given by said Hollander in his answer to the interrogatories filed with
122 complainant's bill, and which answer this defendant adopts as part thereof. He admits that he is the endorsee upon the note for two hundred and fifty dollars mentioned in the thirty-second preference, but he avers that he was only endorser for the accommodation of said Hollander, and received no benefit under

said note. He denies that he is related to said Hollander as is charged in paragraph seventeen (17), and says he is not related to him in any manner whatsoever, and he denies that he was intimate with said Hollander or that he knew or had reason to know that said Hollander was insolvent or that he was defrauding complainants or any one else. He avers that as a creditor of said Hollander he accepted under said deed, and claims the benefits of the preferences to him. He insists that said deed is *bona fide* and in full force, and is not fraudulent or void for any of the reasons averred by complainant or for any other reason whatsoever, and that the trusts of the same should be fully executed.

And now, having fully answered, he prays to be hence dismissed with his proper costs.

JULIUS LANSBURGH.

LEON TOBRINER,
Solicitor for Defendant.

I, Julius Lansburgh, on oath depose and say that I have heard read the foregoing answer by me subscribed and know the contents thereof; that the facts stated therein upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

JULIUS LANSBURGH.

Subscribed and sworn to before me the twenty-eighth (28th) day of March, A. D. 1889.

[SEAL.] ALEXANDER H. BELL,
Notary Public, D. C.

123 *Separate Answer of Defendant Chas. Baum.*

Filed March 30, 1889.

In the Supreme Court of the District of Columbia.

FECHHEIMER *et al.* *vs.* HOLLANDER *et al.* } No. 10107. Equity.

Separate answer of defendant Charles Baum.

This defendant, by protestation, not confessing or admitting any of the matters and things in the bill herein contained to be true as the same are therein set forth, for answer to so much and to such parts as he is advised it is necessary and material for him to answer makes answer and says:

This defendant has no knowledge of the truth of the matters set out in paragraphs 1, 3, 6, 7, 8, 9, 11, 12, 14, 15, 16, 19, 20, 21, 22, 25, and 26 of said bill, and can neither admit or deny the same, and he demands strict proof thereof if the same shall be considered material to his interests.

He admits the truth of the allegations contained in paragraphs 2–4 and 10 of said bill.

5th. He is informed that the said deed is not invalid, fraudulent, or void because of the reasons or grounds set forth by complainants in paragraph 5 of said bill or for any other cause.

Answering paragraph 13, this defendant says he admits the National Bank of Washington is preferred in said deed in the sum of twenty-three hundred and twenty-five dollars. The notes described in the 16th and 33rd preferences of said assignment were drawn by defendant for the accommodation of said Justus Hollander. Defendant received no benefit from said notes whatsoever. At their maturity he was compelled to pay the amount due thereon to said bank, and said notes were transferred to him. He now holds the same and insists that he is entitled to be subrogated to the
124 rights of said banks under said deed. As to the note for eight hundred and twenty five dollars mentioned in said paragraph as the 5th preference to said bank, he says he endorsed said note for the accommodation of said Justus Hollander, and at its maturity paid the amount due thereon to the bank. He claims the same right with respect to this note as is claimed with respect to the two aforementioned notes.

17th and 24th. Defendant is not related to said Justus Hollander. He denies that he was intimate with him or that he knew or had reason to know that he was insolvent or that he was defrauding complainants or any other person whomsoever. He denies that complainants have a stronger equity as to said assigned property than the preferred creditors.

18th and 23rd. Defendant is informed and believes that the said deed is not fraudulent or void and that complainants are not entitled to have said deed set aside for any reason whatsoever.

This defendant, further answering, says that he accepted under the said assignment and insists that the same is a valid and *bona fide* deed, and that the trusts created thereby should be fully executed.

And now, having fully answered, defendant begs to be hence dismissed with his proper costs.

CHARLES BAUM.

LEON TOBRINER, *For Def't.*

I, Charles Baum, on oath depose and say that I have heard read the foregoing answer by me subscribed and know the contents thereof; that the facts stated therein upon my personal knowledge are true and those stated upon information and belief I believe to be true.

CHARLES BAUM.

Subscribed and sworn to before me this eleventh (11th) day of February, A. D. 1889.

[SEAL.] ALEXANDER H. BELL,
Notary Public, D. C.

125 *Separate Answer of Defendant Abraham Kaufman.*

Filed March 30, 1889.

In the Supreme Court of the District of Columbia.

FECHHEIMER *et al.*
vs.
HOLLANDER *et al.*
No. 10107. Equity.

Separate answer of defendant Abraham Kaufman.

This defendant, by protestation, not confessing or admitting to be true any of the matters and things in complainants' bill contained as the same are therein set forth, for answer to so much and to such parts as he is advised it is necessary and material for him to answer, answering, says:

This defendant has no knowledge of the matters and things averred in paragraphs 1, 3, 6, 7, 8, 9, 11, 12, 15, 16, 19, 20, 21, 22, 25, and 26 of said bill and can neither admit or deny the same; he demands strict proof thereof if the same is considered material to his interests.

Defendant admits the truth of the allegations contained in paragraphs 2, 4, and 10 of said bill.

Answering paragraph five, defendant says he is informed and believes that the assignment therein referred to is not void or fraudulent because of the reasons therein set forth nor for any other reasons whatsoever.

Defendant has no knowledge of the various matters averred in paragraph thirteen except as to the note for one hundred dollars described as the second preference to the Bank of Washington. Defendant says he executed this note for the accommodation of Justus Hollander. Defendant further says he received no benefit thereby whatsoever. He believes said note has been duly paid by the assignee.

He knows nothing as to the matters averred in paragraph
126 fourteen except as to the preference numbered forty-two.

This note he also executed for the accommodation of said Hollander, and at its maturity this defendant paid the same and still holds it and claims that he should be subrogated to the rights of said bank.

17th. Defendant admits that he is a brother-in-law of said Justus, but he most emphatically denies that he was intimate with him; that he knew or had reason to know that said Justus was insolvent or that he was defrauding or intending to defraud any person whomsoever, nor does he believe that said Justus had any such intention.

18th. Defendant denies that complainants are entitled to have said deed of assignment set aside on any ground whatsoever.

24th. Defendant admits that the banks have sureties upon the

notes held by them, but he denies that they should be required to first exhaust their remedies as against said sureties, as claimed.

And now, having fully answered, he prays to be hence dismissed.

ABRAHAM KAUFMAN.

LEON TOBRINER,
For Defendant.

I, Abraham Kaufman, on oath depose and say that I have heard read the foregoing answer by me subscribed and know the contents thereof; that the facts stated therein upon my personal knowledge are true and those stated upon information and belief I believe to be true.

ABRAHAM KAUFMAN.

Subscribed and sworn to before me this twenty-eighth (28) day of January, A. D. 1889.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Assistant Clerk.

127 *Answer of Defendant Daily Post Publishing Co.*

Filed March 30, 1889.

In the Supreme Court of the District of Columbia.

FECHHEIMER *et al.*
vs.
HOLLANDER *et al.* } No. 10107. Equity.

Separate answer of defendant The Daily Post Publishing Company to the bill herein.

This defendant, by protestation, not confessing or admitting to be true any of the matters and things in said bill set out, for answer to so much and to such parts as it is advised it is necessary and material for it to answer, answering, says:

This defendant has no knowledge of the truth or the falsity of the matters and things averred in paragraphs 1, 3, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, and 26 of said bill and can neither admit nor deny the same, and should they be considered material to his interests demand strict proof thereof.

Defendant admits the truth of the allegations contained in paragraphs 2 and 4 and 10 of said bill.

Answering paragraph 21, defendant says that the 64th preference in said deed of assignment is to this defendant securing the note for two hundred dollars described. This note was given for advertising in the newspaper of this company just previous to the failure of said Hollander, and defendant denies that said note was given in settlement for advertising running a long way back. Defendant insists that said assignment is a valid and good instrument, and

that it is entitled to have the same enforced and executed and the proceeds realized thereunder distributed as therein directed.

EDWARD T. FLETCHER,
Secretary and Treasurer Washington Post Pub. Co.

128 I, Edward T. Fletcher, on oath depose and say that I am secretary and treasurer of the Daily Post Publishing Company and have heard read the foregoing answer by it subscribed and know the contents thereof; that the facts stated therein upon personal knowledge are true and those stated upon information and belief I believe to be true.

EDWARD T. FLETCHER,
Secretary an- Treasurer Washington Post Pub. Co.

Subscribed and sworn to before me this 25 day of February, A. D. 1889.

[SEAL.] A. B. KELLY,
Notary Public.

Answer of Defendant National Republican Co.

Filed March 30, 1889.

In the Supreme Court of the District of Columbia.

FECHHEIMER *et al.* *vs.* HOLLANDER *et al.* } 10107. Equity.

Separate answer of defendant National Republican Company to the bill of complaint herein.

This defendant, by protestation, not confessing or admitting to be true any of the matters and things in said bill set out, for answer to so much and to such parts as it is advised it is necessary and material for it to answer, answering, says:

This defendant has no knowledge of the truth or the falsity of the matters and things averred in paragraphs 1, 3, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, and 26 of said bill and can neither admit nor deny the same, and should they be considered material to its interests demand- strict proof thereof.

Defendant admits the truth of the allegations contained in paragraphs 2, 4, and 10 of said bill.

129 Answering paragraph 21, defendant says that the 65th preference in said deed of assignment is to this defendant securing the note for one hundred and sixty dollars therein described; this note was given for advertising in the newspaper of this company just previous to the failure of said Hollander, and defendant denies that said note was given in settlement for advertising running a long way back. Defendant insists that said assignment is a valid and good instrument, and that it is entitled to have the same enforced and executed and the proceeds realized thereunder distributed as therein directed.

I, E. W. Fox, on oath depose and say that I am president of the National Republican Company and have heard read the foregoing answer by it subscribed and know the contents thereof; that the facts stated therein upon personal knowledge are true and those stated upon information and belief I believe to be true.

E. W. FOX,
President The National Republican Co.

Subscribed and sworn to before me this twenty-fifth day of February, A. D. 1889.

[SEAL.]

A. B. KELLY,
Notary Public.

Separate Answer of Riggs and Co.

Filed March 30, 1889.

In the Supreme Court of the District of Columbia.

FECHHEIMER, GOODKIND AND CO. *vs.* JUSTUS HOLLANDER *et al.* } No. 10107. Equity.

Separate answer of the defendants Riggs and Co. to the bill of complaint herein.

130 These defendants, by protestation, not confessing or admitting any of the matters and things in said bill to be true as they are therein set forth, for answer to so much and to such parts as they are advised it is necessary and material for them to answer, answering, say:

These defendants have no knowledge of the matters and things averred in paragraphs 1, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 15, 16, 17, 19, 20, 21, 22, 25, and 26 of said bill and can neither admit nor deny the same. If they are material to their interests they demand strict proof thereof.

They admit the truth of the allegations contained in paragraphs two and ten.

Answering paragraph fourteen, these defendants say they admit that they are preferred in said deed of assignment in the sum of twenty hundred and twenty-five dollars, and that at the time of the execution of said deed said Hollander was indebted to them in that amount upon the notes described in said deed of assignment of said notes. Those mentioned in the eighteenth and forty-second preferences, amounting to three hundred dollars and one hundred and seventy five dollars respectively, were paid to these defendants and they now hold the following: Note for two hundred and fifty dollars, described in preference fifteen; note for three hundred and twenty-five dollars, described in preference twenty-five; note for two hundred and fifty dollars, described in preference thirty-four; note for two hundred and fifty dollars, described in preference thirty-two, and a note for four hundred and seventy-five $\frac{00}{100}$ dollars, as described

in the forty-ninth preference. Said notes are for money advanced by these defendants to said Justus Hollander in the regular course of business between him and these defendants as bankers.

Defendants are informed by counsel that paragraphs eighteen and twenty-three of said bill embody propositions of law which they are not required to answer, except that defendants say they gave a full and valuable consideration for the notes held by *it*.

131 Answering paragraph twenty-four, defendants say they admit that upon the notes held by them they have sureties. They deny, however, that the loans made upon said notes were made upon the faith of the responsibility of said sureties solely, nor do they know that said sureties are good. These defendants accepted under said deed of assignment and insist that the same should be executed according to its provisions for their benefit as creditors named therein. They deny that complainants have stronger equities as to the assigned property than the claims of these defendants.

Further answering, these defendants say that they had no knowledge of any fraudulent intention or act on the part of said Justus Hollander, nor did they have reason to believe that he contemplated any, nor do they now know of any committed by him. They discounted the notes preferred in good faith and claim that they should be paid out of the proceeds of the stock assigned by said Hollander to said Bieber.

THO. HYDE, *For Myself*,
E. FRANCIS RIGGS,
CHAS. C. GLOVER,
ALEXANDER ELLIOTT,
Surviving Partners of the Firm of Riggs and Co., Bankers.

I, Thomas Hyde, on oath depose and say that I am a member of the firm of Riggs and Co. and have heard read the foregoing answer by them subscribed and know the contents thereof; that the facts therein stated upon personal knowledge are true and those stated upon information and belief are believed to be true.

THO. HYDE.

Subscribed and sworn to before me this 18th day of February, A. D. 1889.

[SEAL.] D. RITTENHOUSE,
Notary Public.

132 *Answer of Defendant Willie Hollander.*

Filed April 4, 1889.

In the Supreme Court of the District of Columbia.

MARTIN FECKHEIMER *et al.*
vs.
JUSTUS HOLLANDER *et al.* } No. 10107. Equity.

Separate answer of defendant Willie Hollander.

This defendant, by protestation, not confessing or admitting to be true any of the matters and things in the bill of complaint herein as the same are therein set forth, for answer to so much and to such parts as he is advised it is necessary and material for him to answer, makes answer and says:

1st, 2nd, and 4th. This defendant admits the averments in paragraphs one, two, and four of said bill to be true.

3rd, 5th, 6th, 7th, 8th, 9th, and 10th. This defendant has no knowledge of the matters set out in the third, fifth, sixth, seventh, eighth, ninth, and tenth paragraphs of said bill and can neither admit -or deny the same, and should they be considered material he requires and demands strict proof thereof.

11th. Answering paragraph eleven, he says he has no knowledge of the matters set forth in said paragraph excepting the averments regarding the preference to this defendant. With respect to this he says that he was engaged in the gentlemen's furnishing business at No. 1421 Pennsylvania avenue northwest, in the city of Washington, D. C., and, desiring to retire from said business, he on or about the 3rd day of February, A. D. 1886, sold the stock remaining therein to the defendant Justus Hollander for two hundred and ninety-three $\frac{83}{100}$ dollars; that said amount was still due this defendant at the time of said Justus Hollander's failure. Defendant further says that he was duly paid said sum by defendant Bieber and has no further claim or interest under said assignment.

133 This defendant has no knowledge or information concerning the facts alleged in paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26 and can neither admit -or deny the same, but demands strict proof thereof.

And now, having fully answered, he prays to be hence dismissed with his proper costs.

W. HOLLANDER.

LEON TOBRINER,
Solicitor for Defendant.

I, Willie Hollander, on oath depose and say that I have heard read the foregoing answer by me subscribed and know the contents thereof; that the facts stated therein upon my personal knowledge are true and those stated upon information and belief I believe to be true.

W. HOLLANDER.

Subscribed and sworn to before me this 25th day of January, A. D. 1889.

[SEAL.] J. FRANK PETERSON,
Notary Public.

Motion to Dismiss Bill for Want of Replication.

Filed November 5, 1889.

In the Supreme Court of the District of Columbia.

FECHHEIMER *et al.* *vs.* HOLLANDER *et al.* } No. 10107. Equity.

And now comes the defendants, Julius Hollander, Samuel Bieber, Willie Hollander, Julius Lansburgh, James Hollander, Theodore Hollander, Charles Baum, Abraham Kaufman, Edward Hollander, Riggs and Co., The Daily Post Publishing Co., and National
134 Republican Co—

And move the court to dismiss the bill herein as against them for want of a replication to the answers herein by them filed in conformity with rule sixty-one of the equity rules of this court.

LEON TOBRINER,
Solicitor for the Above-named Defendants.

Take notice that on Thursday, the seventh day of November, A. D. 1889, at the opening of the court, or as soon thereafter as counsel can be heard, I shall call the attention of the court to the above motion.

LEON TOBRINER, *Solicitor.*

To S. S. Henkle, Esq., solicitor for complainants.

Replication.

Filed November 7, 1889.

In the Supreme Court of the District of Columbia.

FECHHEIMER, GOODKIND AND CO. *vs.* JUSTUS HOLLANDER *et al.* } Equity. No. 10107.

Replication.

The complainants join issue upon the several answers of the defendants, Justus Hollander, Edward Hollander, Theodore Hollander, Julius Lansburgh, Daily Post Publishing Company, Abraham Kaufman, Charles Baum, Riggs and Co., James Hollander, Willie Hollander, National Republican Company, Samuel Bieber.

S. S. HENKLE,
Solicitor for Complainants.

135 *Notice of Motion to Limit Time for Taking Testimony.*

Filed March 13, 1890.

In the Supreme Court of the District of Columbia.

FECHHEIMER *et al.* *vs.* HOLLANDER *et al.* } Equity Doc. 10107.

Take notice that on Monday, March 17th, 1890, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, I shall move the court to limit the time for taking of testimony in this couse.

LEON TOBRINER,
Defendants' Solicitor.

To S. S. Henkle, complainants' solicitor.

Order Limiting Time for Taking Testimony.

Filed March 17, 1890.

In the Supreme Court of the District of Columbia.

ALBERT FECHHEIMER *et al.* *vs.* JUSTUS HOLLANDER *et al.* } No. 10107. Equity.

Upon motion of the defendants, it is by the court, this 17th day of March, A. D. 1890, ordered that the complainants have forty days from this date to take proof in their behalf in chief; that thereafter the defendants have thirty days to take proof on their behalf, and that the complainants have ten days thereafter to take proof in rebuttal.

By the court:

W. S. COX, *Justice.*

I consent.
S. S. HENKLE.

136 *Testimony for Complainants.*

Filed May 12, 1890.

In the Supreme Court of the District of Columbia.

FECHEIMER, GOODKIND AND CO. *vs.* JUSTUS HOLLANDER *et al.* } In Equity. No. 10107.

WASHINGTON, D. C., *April* 25, 1890—3 o'clock p. m.

Met, pursuant to agreement, at the office of S. Henkle.
Present on behalf of the complainants, Mr. Henkle and Mr. Smith.
Present on behalf of the defendant-, Mr. Tobriner.

Whereupon GEORGE FISHEL, a witness of lawful age, called by and on behalf of the complainant, having been first duly sworn, is examined—

By Mr. SMITH:

Q. Mr. Fishel, you are a member of the firm of Fecheimer, Goodkind & Co.?

A. I am.

Q. Did you represent your firm in the transactions with Justus Hollander?

A. I did.

Q. What, if any, representations did Mr. Hollander make to you as to his ability to pay for the goods which he purchased from you in the spring of 1886?

A. He claimed to be able to pay for them.

Q. What, if anything, did he say as to where he purchased the bulk of his spring stock in that year?

A. He gave me the impression that he purchased his principal stock of clothing from us.

Mr. TOBRINER: The impression of the witness is objected to.

By Mr. SMITH:

Q. Can you recall what Mr. Hollander said to that effect?

137 A. That the best part of his clothing was purchased from us and simply the cheaper grades were bought in Baltimore.

Q. What did he say to you as to the extent of his purchases elsewhere in proportion to the amount of his purchases from you?

A. He did not make any special reference to the extent.

Q. What did he say as to the amount of purchases as compared with the amount which he purchased from you?

A. He gave me the impression that they were much more than his purchases from us.

Mr. TOBRINER: The impressions the witness may have derived from any conversation had with the defendant Justus Hollander are objected to as being incompetent.

By Mr. SMITH:

Q. Are your impressions about this matter derived from what Mr. Hollander said to you on these occasions?

A. They are, positively.

Q. Mr. Fishel, if a firm is doing a business such as Mr. Hollander was doing, of $1,500 per month or thereabouts, what, in the ordinary course of business, would be the usual amount of a season's purchases.

Mr. TOBRINER: I object to the question as being hypothetical and because no proper foundation has been laid for it.

A. The usual rule is 33⅓ per cent. less than the amount of sales at all times by business men.

Q. Where his sales amounted to $1,500 a month on the average what ought his season's purchases to amount to?

A. The season is usually figured at five months, and if the sales were $1,500 a month his purchases should not exceed $5,500.

Q. What months are the five of which you speak?

A. The spring season is from March to the 1st of September. From February to the middle of June comprise the bulk of the season, and the purchases are usually made in proportion to the sales.

Q. When did you become fully aware of Hollander's design to defraud you in making his spring purchases during that year?

138 A. I did not become fully aware of it until the time his answer to the bill in this case was filed, after the assignment.

Q. You suspected him before that, did you not?

A. Not until some time in June.

Q. You did not become fully aware of his design to cheat you until the discovery made in this case in the answer?

A. In the answer in this case.

Q. If a firm was doing a business of $1,500 a month and purchased goods for the season to the amount of $20,000 or thereabouts, what would it indicate?

Mr. TORRINER: I object to that as incompetent.

A. Unless the man was a wealthy man it would indicate fraud or gross carelessness in business.

Cross-examination.

By Mr. TORRINER:

Q. How long had your firm been doing business with Justus Hollander?

A. I don't remember the exact time; but probably two or three years.

Q. Do you know the amount of transactions between your firm and him during the first year of your business relations?

A. No, sir; not without referring to our books.

Q. Do you know whether the purchases for the spring season of 1886 made by him of your firm were less or more that his purchases for the same season of the previous year?

A. I do not.

Q. Do you not remember, as a matter of fact, that the purchases for the spring season of 1886 were less than those for the spring of 1885?

A. I do not know without referring to our books.

Q. Do you remember any of the conversations you had with Mr. Hollander with respect to his spring purchases in 1886?

A. Nothing more than I have stated.

Q. You give your impression in your answer?

A. That was a conversation that we had about this making the purchases, in which he remarked that the best part of his

139 clothing was purchased from our firm.

Q. I am speaking about his ability to pay.
A. He did not make any statement.
Q. Did he make any statement with whatsoever respect to his ability to pay you?
A. I think not.
Q. He always paid you for the purchases that he had made prior to that time, did he not?
A. No, sir; there was a balance from the season before.
Q. That was settled by a note, was it not?
A. It was.
Q. For the other purchases he had made, outside of this balance, he had always settled?
A. For the purchases he had made before that, yes, sir.
Q. In what business was Mr. Hollander engaged?
A. In the clothing and furnishing goods business.
Q. He carried a very heavy stock of furnishing goods and hats and caps, did he not?
A. I don't know the value of the stock.
Q. Were you ever in his establishment?
A. I was.
Q. How many times?
A. Several times.
Q. Did you ever make any estimate of his general stock of merchandise?
A. I did not.
Q. Is it a matter of fact that he did make the largest purchases of clothing of your firm?
A. That was my idea.
Q. Is it not a matter of fact that he did?
A. I cannot say.
Q. Do you know from what other firms he purchased clothing?
A. I do not.
Q. At the time of the execution of the deed of assignment by Mr. Hollander he owed your firm how much money?
A. I think the papers will show that. I do not know the exact amount now.
Q. Do you know about how much he owed you?
A. I think it was in the neighborhood of $4,000.
140 Q. Do you know how that claim of yours was made up?
A. Yes; part by note and an open account.
Q. Do you know how much was represented by note?
A. I think it was $2,000.
Q. And the balance on an open account?
A. Yes, sir.
Q. Do you know how much of this note represented any purchases previous to the spring of 1886?
A. I do not. It must have been the full amount of goods for the previous season.
Q. Do you know whether Mr. Hollander paid your firm within sixty days before the execution of the deed of assignment any sums of money?

A. I don't know.

Q. Do you not know as a matter of fact that he paid your firm within sixty days prior to the date of the deed of assignment the sum of $1,035.09?

A. I don't remember now.

Q. Do you know when the first note that you sued him on matured?

A. Some time during the month of May, I think.

Q. Are you positive of that?

A. I could not remember now; I think it was in May.

Q. When that note was not paid did you see Mr. Hollander about it?

A. Yes, sir.

Q. What conversation took place between you at that time?

A. He promised me a part of it.

Q. Any other conversation than that?

A. No, sir; not especially.

Q. Did you see him again with respect to the note?

A. I did.

Q. When?

A. A few days afterwards.

Q. What was the substance of that conversation?

A. He gave me a promise to pay.

Q. Did you see him again after that?

A. No.

Q. Did you see him a few days before the execution of the deed of assignment?

A. No.

141 Q. You had no conversation with him?

A. No, sir.

Q. Do you know on what date the deed of assignment was executed?

A. I do not.

Q. For your information I will tell you it was on the 15th day of June, 1886. Have you any recollection of any conversation that you had with him within a week prior to that time?

A. Some time prior to that I had a conversation with him. I do not know whether it was a week or not.

Q. Within a week or a few days?

A. I do not know whether it was a week. It might have been two weeks.

Q. Did you have a conversation with him?

A. Yes, sir.

Q. What was the substance of that conversation?

A. I simply tried to get him to pay the note.

Q. What did you say?

A. I asked him to pay it or to make every effort to pay it.

Q. What did he say?

A. That he would try to do so.

Q. Was that the whole conversation?

A. Yes, sir.

Q. Do you not remember at that time of threatening him with a lawsuit, and saying that if he did not pay the note and the indebtedness to your firm you would hound him all over the country until he did pay the debt?

A. I never made such a remark.

Q. Or anything that amounted to that in substance?

A. I said that we would be compelled to sue.

Q. Had he been sued at that time?

A. No; not that I know of.

Q. Do you know when you did sue him on that note?

A. I do not.

Q. You say you have no idea as to the amount of purchases Hollander had been making of you in the previous season?

A. I do not remember.

Q. Nor do you know whether they were larger or smaller
142 than the purchases of the spring of 1886?

A. I cannot remember about that.

Q. Did you sign and swear to the bill filed in this case?

A. Either my partner or myself; one of the firm.

Q. Who had charge of the direct transaction with Mr. Hollander?

A. I sold him the goods.

Q. Who attended to the credit lines in your house?

A. My partner.

Q. What is his name?

A. Mr. Goodkind.

Q. Did he make any investigations into the affairs of Mr. Hollander before the institution of this suit?

A. He did not.

Q. Who did?

A. I don't remember.

Q. Did you?

A. No.

Q. Do you know that anybody did?

A. No.

Q. On the 28th of July, 1886, you filed a bill in this suit alleging that Hollander at the time he made these purchases from your firm was insolvent, and that he knew it, and that he did not intend to pay your firm for the goods so purchased. At that time had you information to that effect?

A. Mr. Goodkind attended to that part of it. I do — know whether I had or not.

Q. Then, when you say that you had no information that Mr. Hollander intended to defraud your firm in the purchase of these goods until the filing of his answer in this case, you are mistaken, are you not? The answer was filed on the 30th day of March, 1889, some two years and a half after the filing of your bill.

A. We had the information of fraud, but no positive fact until the answer was filed.

Q. Your firm has entered suit for the whole amount that is due from Mr. Hollander to them, have they not?

A. Yes, sir.

Q. And have recovered a judgment at law against him for those amounts?

A. I don't know that. I suppose that is a fact. We have never recovered any money that we know of.

143 Q. Did you sell to Mr. Hollander the goods mentioned in the open account of $1,844 and some odd cents?

A. I did.

Q. Do you know when these sales took place?

A. It was either in March or April. I don't know which.

Q. Of what year?

A. 1886.

Q. How long after the goods had been ordered by Mr. Hollander from you were they delivered?

A. I don't know how long. It was not very long after that. It was probably a week or ten days at the outside. We usually ship the goods within a week or ten days after they are ordered; sometimes sooner.

Q. Do you not remember, as a matter of fact, that these goods were ordered some time in the early part of February or March of 1886?

(The witness referred to a paper.)

Q. One moment. What are you refreshing your memory from?

A. Simply from a statement. I know the positive fact that they were not ordered earlier than some time in March.

Q. In February or March of 1886 your firm was unfortunate enough to have a fire in their establishment or in their neighborhood which affected them in their business?

A. Not in March.

Q. In what month?

A. In February.

Q. That somewhat delayed you in shipping the goods that were ordered from you, did *they* not?

A. It delayed us ten days.

Q. It is the custom in the trade that the spring goods are ordered a great deal earlier than they are shipped, is it not?

A. No, sir.

Q. When are the spring purchases usually made?

A. It depends entirely upon the man and the section of the country he is in.

Q. Say in Maryland or in the District of Columbia?

A. We sell spring goods as late as May and June.

Q. Did Mr. Hollander ever order as late as May or June?

A. I do not remember.

144 Q. Were the purchases made by him from you in the spring of 1886 anything out of the usual amount of his purchases?

A. I don't know whether it was larger or smaller. It was about equal.

Q. You signed and swore to the declaration in the first suit that your firm instituted against Mr. Hollander, did you not?

A. I don't remember whether it was my partner or myself.

Q. In that suit you sought to recover $2,844 and $100 on a promissory note and $1,856 upon an open account for goods sold and delivered. At that time, to wit, on the 11th day of June, 1886, was the open account due you from Mr. Hollander?

A. It was.

Q. Is it not a matter of fact that that open account was purchased on a credit of four months?

A. No, sir.

Q. What was the time of the usual purchase made by Mr. Hollander?

A. Sixty days.

Q. Did he always settle within sixty days?

A. He settled by note after that.

Q. How long after that?

A. I don't remember.

Q. Between the filing of this first suit, to wit, on the 11th day of June, 1886, and the time of the filing of the bill in this case, did you make any investigations into the affairs of Mr. Hollander?

A. I don't remember, sir.

Q. You know whether you did or did not?

A. No; I don't remember that.

Q. If you had made investigations you could have remembered it, would you not?

A. It is so long ago I do not think I would.

Q. How is your memory; is it pretty fair?

A. Sometimes.

Q. Is it such a usual thing for you to have cases of this kind that if you make any investigation that you would fail to remember it?

A. Yes.

Q. All of these questions and answers with regard to the amount of the spring purchases in proportion to the amount of sales
145 are hypothetical, are they not?

A. I do not quite understand the question.

Q. Have you made any investigation at all into the affairs of Mr. Hollander, as shown by his answer in this case?

A. I saw the answer.

Q. When did you first see it?

A. When the answer was first filed.

Q. Have you made any calculation at all on the basis of those answers?

A. Only that his purchases are in excess of his sales.

Q. Do you sell any other firms in this city?

A. Yes, sir.

Q. How many?

A. Several.

Q. Did you at that time?

A. At that time.

Q. Were their purchases larger or smaller than those made by Mr. Hollander?

A. I don't remember.

Q. Is it not a matter of fact that Mr. Hollander did purchase of you the greater part of his fine clothing?
A. That is my idea.
Q. You often examined and looked over his stock, did you not?
A. I walked through his stock.
Q. The same examination that you would make of other stocks?
A. Yes, sir.
Q. And the conclusion that you came to was that the greater part of his fine stock consisted of goods purchased from you?
A. Yes, sir.
Q. Was not the understanding between you and Mr. Hollander at the time that he began making purchases from you that he was to purchase the greater part of his clothing stock from your firm?
A. There was no special understanding.
Q. Was not that the impression you received from the conversation you had with him?
A. That was my impression. There was no understanding about it.

146 Q. Was not the understanding that you would grant him indulgences and credits so that he could get along better?
A. There was no understanding so far as the extending of credits was concerned.
Q. Did you not extend him credit?
A. We did.
Q. Did you not grant him indulgences?
A. Occasionally.
Q. Mr. Hollander had been pretty fair pay prior to this time, had he not?
A. The average.

Redirect examination.

By Mr. HENKLE:

—. I want to ask you one question. You say that Mr. Hollander told you that he was purchasing the bulk of his goods from you or from your firm?
A. The bulk of the clothing.
Q. Did you understand that he was carrying a large stock of goods that were not clothing, which he was purchasing elsewhere?
A. I did not pay any attention to his other stock.
Q. I want to know whether or not it was your understanding that the purchases he was making of the goods in which he was trading were bought chiefly from our house.
A. Clothing; yes, sir; the better class of clothing.
Q. Do you say that you did not make any other investigation as to what else he was dealing in?
A. No, sir.
Q. You did not know to what extent he was making purchases of any other goods than clothing?
A. I did not.
Q. Are you expert enough to know, in such a business as he was

doing, what proportion of the goods would be clothing and what proportion would be hats, caps, and other things?

A. No, sir.

Recross-examination.

By Mr. TOBRINER:

Q. You do not know whether the proportion of his gents' furnishing stock, hats, valises, umbrellas, canes, &c., amounted to more than the stock of the clothing he carried or not, do you?

147 A. I don't know, sir.

Q. You do not know what the proportion was?

A. No, sir.

Q. How did you happen to begin your dealings with Mr. Hollander?

A. I don't remember, it has been so long ago.

GEORGE FISHEL.

Signed by the examiner by consent.

Subscribed and sworn to before me this — day of ——, 1890.

——— ———,

Examiner in Chancery.

Mr. TOBRINER: I will ask the examiner to note that in response to the request of counsel for the complainant- the counsel for the defendant- produces here Justus Hollander as a witness and proffers him to counsel for the complainant- to be examined if they desire so to do.

Mr. HENKLE: Counsel for the complainants say that they desire first to examine the assignee, Mr. Bieber, before examining Mr. Hollander and arranged for his presence here for this time, but, as he has failed to appear, they propose to postpone the examination until tomorrow at 1 o'clock, when I may desire to examine Mr. Hollander, and I desire him to be here.

The further taking of these depositions was adjourned until Saturday, April 26, 1890, at 1 o'clock p. m.

WASHINGTON, D. C., *April* 25, 1890—1 o'clock p. m.

Met pursuant to adjournment.

Present on behalf of complainant-, Mr. Henkle and Mr. Smith.

Present on behalf of the defendant-, Mr. Tobriner.

Whereupon SAMUEL BIEBER, a witness of lawful age, called by and on behalf of the complainant, having been first duly sworn, is examined—

By Mr. HENKLE:

148 Q. Please state your name, residence, and occupation.

A. My name is Samuel Bieber; my residence is 630 E St. S. E. I am at present an agent in the real-estate business.

Q. You were the assignee of Justus Hollander?

A. Yes, sir.

Q. That assignment was made in June 6th, 1886?
A. Yes, sir.
Q. What was assigned to you?
A. All of the stock of merchandise contained in the store 1217 Penn. Ave. N. W.

Mr. TOBRINER: The question and answer are objected to because the assignment speaks for itself.

By Mr. HENKLE:

Q. What did the goods and merchandise consist of?
A. Clothing, hats, gent's furnishing goods, trunks, valises, and umbrellas.
Q. Do you remember the actual amount of the value of the stock? You had it appraised, did you not?
A. Yes, sir.
Q. What was the aggregate amount of the appraisement?
A. The stock was appraised for $17,094.33.
Q. Have you the inventory with you?
A. No, sir.
Q. Did you preserve the inventory?
A. Yes, sir.
Q. You can produce —, can you not?
A. Yes, sir.
Q. Do you remember what proportion of that stock was clothing?
A. There was a great deal of clothing there.
Q. Have you any recollection as to the cost between the clothing and the hats, caps, shoes, &c.?
A. There was more clothing than there was of any other goods.
Q. How much more—about what proportion?
A. I guess about two-thirds.
Q. About two-thirds clothing?
A. Yes, sir.
Q. What did you do with the stock after you took possession of it?
A. I sold it at retail for about 7 or 6 months; then I saw the expenses were rather large, and I went to work and went around among some of the merchants on 7th street, the clothing merchants,
149 and asked them if they would like to buy the stock. They did not care to buy the stock, and I finally sold it in bulk.
Q. Who carried on the business there for you while you were selling it out as a retail business?
A. I was there every day.
Q. Was Mr. Hollander employed there?
A. Yes, sir; by me.
Q. He was by you?
A. Yes, sir.
Q. How was he employed?
A. I paid him so much a week.
Q. How much?
A. I think it was either 15 or 20 dollars a week.

Q. Who else did you employ?
A. I had four other clerks.
Q. What did you pay them?
A. Some ten dollars a week, some 12, some six, seven, and eight.
Q. Did Mr. Hollander have general supervision of the business or did you have it?
A. I did. I came there every morning and left there in the evening.
Q. How much of that stock did you sell at retail?
A. My report will show that better than I could answer it now, as it has been over three years ago.
Q. Where is your report? Have you got it?

Mr. TOBRINER: It is filed as an exhibit with the answer.

By Mr. HENKLE:

Q. You say you sold in bulk the balance of the goods?
A. Yes, sir.
Q. When did you make that sale?
A. I made that sale on the 19th day of January, 1887.
Q. What was the amount of the sale?
A. The amount of the sale was $5,036.00.
Q. What efforts did you make to convert the stock into money while you were selling at retail?
A. I tried every way I could to get the best price for the benefit of the creditors.
Q. And you pressed the goods off as rapidly as you could?
A. Yes, sir; for the most money that I could get out of it.
Q. You were urging the sale of the goods and getting them
150 off of your hands as fast as you could?
A. Yes, sir; I tried to do that.
Q. With the desire of converting them into money as rapidly as possible for the purpose of settling up the estate?
A. Yes, sir.
Q. The report shows what you sold them for?
A. Yes, sir.
Q. To whom did you sell?
A. I sold to Theodore Hollander and James Hollander.
Q. They were brothers of Justus Hollander, were they not?
A. Yes, sir.
Q. Were they in the store when you took possession of it?
A. No, sir; Theodore Hollander was in business in the First ward, out on Penn. Ave. N. W.
Q. What business was he in?
A. In the clothing and furnishing goods business.
Q. Had he gone out of that business before you sold to him?
A. No, sir.
Q. Is he still in that business?
A. He has gone out since.
Q. Where is he now?
A. I don't know.

Q. Is he at the store on the avenue?
A. I don't know. I think he is in Toledo, Ohio.
Q. Where is James Hollander?
A. James Hollander is running the business.
Q. He is still there?
A. Yes, sir.
Q. Do you know whether he bought out Theodore or not?
A. I don't know.
Q. Is Justus Hollander there?
A. I do sometimes see him there.
Q. Don't you know that he is engaged in the business there?
A. I cannot say that, sir.
Q. Haven't you seen him selling goods there?
A. I have seen him in the store when I passed by.
151 Q. Have you not seen him there and don't you know he is employed there?
A. I don't know. I could not say that. How do I know who is employed in his store?
Q. Have you not seen him selling goods there?
A. I don't recollect of seeing him there, because I don't go there. I have no business there.
Q. But you know as well as I do that he is employed there. I see him every time I pass there.
A. How can I know it?
Q. You know it as I do, because I see him there when I pass.
A. How do you know whom I am employed by at present?
Q. I asked you if he is not in that store.
A. I can't answer that, because I don't know it.
Q. How were you paid for the stock of goods?
A. I was paid all cash with the exception of $1,600, for which I took their notes.
Q. Then you took the note of these two brothers?
A. Yes, sir.
Q. At what time?
A. It was payable on demand.
Q. Has it been paid?
A. No; I hold it.
Q. You still hold it?
A. Yes, sir; I hold it because I am responsible for that money. I am responsible for the amount of money put into my possession.
Q. How much was paid in cash?
A. There was $3,436.00 in cash and $1,600.00 in a note.
Q. Do you know which of them paid the money?
A. Both parties.
Q. They both paid?
A. Yes, sir.
Q. In equal parts?
A. I don't know that. They counted the money out to me.
Q. Do you know where the money came from?
A. No, sir.

Q. Do you know whether James Hollander had any money of his own?

A. I don't know, sir.

Q. Did you ever know him to have any money before?

A. Yes; I did.

152 Q. How much?

A. That I don't know.

Q. You say you knew him to have money. What was it?

A. I can't say the amount, but I knew he had some money or otherwise he could not have bought the stock.

Q. I am not talking about that. I was speaking about the time before that.

A. That is the only reason I can give.

Q. That is the only way you know?

A. Yes, sir.

Q. You know they paid you some money?

A. Yes, sir.

Q. Did you ever know before of his having any money?

A. That I did not.

Q. You never knew him to have any money before?

A. I never know who has got money and who has not until I do business with them.

Q. Did you know of his having any property?

A. I don't know that.

Q. Now, with regard to Theodore Hollander. What do you know about his having money before that?

A. He was in business in the First ward.

Q. He was in the clothing business?

A. In the clothing, hats, and furnishing goods.

Q. What kind of stock had he?

A. He had a pretty good stock.

Q. Do you know whether he had any surplus money outside of his own business?

A. I could not answer that.

Q. He continued to carry on that business after he bought this?

A. Yes, sir.

Q. You don't know whether he took any money or stock out of that store and put it into this or not?

A. I don't know anything about it.

Q. You don't know where he got his money to put into the store?

A. I do not.

Q. What proportion of the proceeds of the sale were applied to the expenses of the establishment and business?

153 A. My report will show that.

Q. It all appears in your report?

A. Yes, sir.

Q. Did you say your inventory was filed with your report?

A. No, sir; not the inventory.

Mr. HENKLE: If I desire to put in that inventory may I consider it in evidence?

Mr. TOBRINER: Certainly.

By Mr. HENKLE:

Q. Who made the inventory?

A. Mr. I. Saks, Mr. M. Hamburger, clothier, and James Ratcliff, auctioneer.

Q. You have been a long time in the clothing business yourself, have you not?

A. Yes, sir.

Q. If a man in the clothing business in Washington is doing a business or making sales of about 1,200 or 1,500 dollars a month during the summer season, what ought to be his purchases during the same season?

A. I could not answer that.

Q. Have you any idea about what the proportion of new purchases ought to be to the sales?

A. I could not answer that.

Q. Is there a rule among merchants?

A. No, sir.

Q. What was your rule?

A. My rule was that if I came to a wholesale house and saw a lot of goods there that I could buy for a little reduction I bought them and bought more than I needed, because I saved on the reduction.

Q. That is because you always had cash to pay?

A. Of course; if I had not——

Q. If you were buying on credit you would not be likely to get these advantages?

A. No; I never paid cash. I would discount my bills; but I didn't care how large the lot was; I would buy it if I could get it at a reduction.

Q. You did that because you had ready capital?

154 A. Well, the profits that I saved on the goods and saved by the reduction induced me to buy more than I could really sell.

Q. Would you have done that if you had been largely in debt and had to go in debt for the goods?

A. I don't know.

Q. If you had to depend on the sale to meet your payments?

A. No; I don't know what I would have done then. If I saw the goods were cheap I could have borrowed the money and paid for them.

Q. Suppose that you were in debt more than the whole stock of goods you had and had no expectation or resources from which you could make your payments except from the sale, would you then buy more goods than you expected to be able to sell?

A. No, sir.

Mr. TOBRINER: I object to all of these foregoing questions and

answers upon the ground that they are hypothetical and because no proper foundation has been laid for them.

By Mr. HENKLE:

Q. Under such circumstances can you give any idea about what the proportion of goods bought ought to be to the amount of sale?
A. As I stated before, I could not answer that question.

Cross-examination.

By Mr. TOBRINER:

Q. Mr. Bieber, you accepted this assignment in good faith, did you not?
A. I did.
Q. I want to ask you about your sale in bulk: Did you advertise the stock for sale in bulk?
A. I went around to the merchants and asked them to come down and buy.
Q. Did you advertise in the newspapers?
A. I think I did, sir.
Q. During the 7 months that you had charge of the stock was anything sold under cost price?
A. No, sir.
155 Q. The only reason that you sold in bulk was that after you had reduced the stock it would not pay to run it in the condition which it then was?
A. Yes, sir; because I could not replenish the stock. You see, when the stock is once broken you have to do the best you can. I had no right to replenish it.
Q. When you say the stock of merchandise was assigned to you, you mean that that was all you took possession of?
A. The stock in the store at 1217 Penn. Ave.
Q. Was there any other property that you could find that belonged to Mr. Hollander that you did not get possession of?
A. No, sir.
Q. Had you been acquainted with James Hollander before the date of this assignment?
A. I had known him; yes, sir.
Q. To any extent?
A. No.
Q. How about Theodore Hollander?
A. I knew him.
Q. You say you went around among the merchants to try to get them to purchase this stock; did you meet with any success or get any bids at all?
A. No, sir.
Q. What was the reason that the merchants would not purchase the stock?
A. It was broken-up stock.
Q. You have had considerable business in the sale of stock bulk in this city?

A. I have.

Q. Is this city a good market to sell stock of that kind?

A. No, sir.

Q. When you say that the clothing stock in the store was the larger part of the stock, do I understand you to mean that it was so at the time that you took possession?

A. Yes, sir.

Q. How long before the execution of this deed of assignment was it when you were engaged in the clothing business?

A. 20 years.

Q. Can you tell me whether the goods manufactured by any firm can be identified by that firm?

A. Yes, sir.

156 Q. In what manner?

A. Every manufacturer has his ticket on the goods and their lot number on the coats, pants, vests, &c., and on children's suits. They always have their tickets on them.

Q. That is a means of identification?

A. Yes, sir.

Q. Besides the peculiar make of the goods?

A. Yes, sir; any merchant who goes into a store can tell his goods when he sees them. He can identify them. I have seen that done among wholesale merchants.

Q. Did the firm of Fecheimer, Goodkind and Co. or any member of that firm or any representative of theirs ever request permission to examine or inspect the stock of goods at that store?

A. Not while I was — possession; no, sir.

Q. What did the stock of goods that you took possession of consist of, of spring goods or winter stock?

A. Both; mostly winter goods.

Q. What is the difference between winter goods and spring goods?

A. Winter goods are heavy weight and spring goods are light weight.

Q. What was the proportion of the spring stock to the winter stock on hand at that time?

A. The largest quantity was winter goods.

Q. Could the amount that you realized on the sale of this whole stock and these assets have been in any way increased?

A. No, sir; I got nearly 100 cents on the dollar when I sold in the bulk.

Q. How long were you in the possession of that stock?

A. I was in possession of that stock from the time it was made until the day I sold it, about 7 months—from June, 1886, to January, 1887.

Q. You say that Mr. Hollander was employed in the store?

A. Yes, sir.

Q. Did he have anything more to say about the control of that stock or the sale of it to any other clerk?

A. No, sir.

Q. Why was he retained there?

157 A. He could help to sell and show the boys where the goods lay.

Q. He knew more about the stock than anybody else, did he not?

A. He knew more about the stock than I did.

Q. You have been the assignee for the benefit of creditors before?

A. I have, sir.

Q. Is it not considered advantageous to have the assignor about the establishment for the purpose of locating the stock and assisting the assignee?

A. I think it is a great advantage to have him there to show where the goods lay and all about it. I think it is an advantage to the assignees in selling the stock to the best advantage.

Redirect examination.

By Mr. HENKLE:

Q. Do I understand you to say that the larger part of goods that came in your possession under the assignment were winter goods?

A. Yes, sir.

Q. Have you any idea what the proportion of spring goods was?

A. No; I cannot say that.

Q. Was it two-thirds?

A. Of winter goods?

Q. Yes.

A. Yes, sir.

Q. More than two-thirds?

A. I think so.

Q. Was it three-quarters?

A. Well, about two-thirds, I guess.

Q. When are the winter goods purchased?

A. Sometimes they are purchased early. They are purchased in the summer sometimes because the manufacture always makes up the winter goods in the summer and the summer goods in winter. They are purchased either in the summer or fall. You see, the bills are dated ahead and consequently in quantity the purchaser has the advantage in buying so much earlier. Some of them buy their winter goods in July. I have bought them in June.

Q. When did you commence to buy summer goods?

158 A. In January, at my place that I am running, they are buying spring goods in January and February.

Q. You do not buy any winter goods in January?

A. Yes, sir; sometimes.

Q. That is when you want to fill in the stock?

A. Yes, sir; to fill in.

Q. But otherwise you don't buy any winter goods after January?

A. No, sir; not unless we had to fill in the stock.

Q. Have you any way of indicating or determining when the winter goods have been purchased?

A. No, sir.

Q. The marks do not indicate when they had been purchased?
A. No, sir.
Q. Whether they were old goods or new?
A. I cannot tell that.

Recross-examination.

By Mr. TOBRINER:

Q. You say that Mr. I. Saks was one of the appraisers?
A. Yes, sir; I. Saks.
Q. Is he a member of the firm of *E.* Saks and Co., of this city?
A. Yes, sir; one of the partners.
Q. Who is Mr. Hamburger?
A. It is Mr. Hamburger, of the firm of I. Hamburger and Son, on Penn. Ave., who are also in the clothing business. Mr. Ratcliff is an auctioneer.

SAMUEL BIEBER.

Signed by the examiner, by consent.

Subscribed and sworn to before me this — day of —, 1890.

——— ———,
Examiner in Chancery.

Counsel for the complainant here offers in evidence the inventory of the stock assigned to Mr. Samuel Bieber, as assignee, and the same is filed herewith, and is marked Exhibit W. H. S. No. 1.

WM. HERBERT SMITH, *Examiner.*

159 DISTRICT OF COLUMBIA, *County of Washington,* } *ss:*

I, Wm. Herbert Smith, an examiner in chancery in and for the city of Washington, District of Columbia, do hereby certify that the foregoing depositions were taken down by me from the oral statements of the said witnesses at the time and place mentioned in the caption thereof; that the said witnesses were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching said matters in controversy; that the said depositions were thereupon read over by the said witnesses and by them subscribed.

I further certify that I am not of counsel or in anywise interested in the result of this suit.

——— ———,
Examiner in Chancery.

EXHIBIT W. H. S. No. 1.

Filed May 12, 1890.

Inventory of Stock, &c., 1217 Penn. Ave. N. W.—Smith.

1 coat		3 00
1 suit		7 50
1 do		8 00
1 do		7 50
1 coat		3 00
2 do., 4		8 00
1 suit		7 00
1 do		7 50
1 do		7 00
1 do		8 00
1 do		7 00
	1 do	8 00
160	1 do	7 00
	1 C. and V	5 00
1 do		5 00
1 do		3 00
1 coat		4 00
1 suit		7 00
1 C. and V		5 00
1 coat		3 00
1 do		4 00
1 suit		7 00
1 C. and V		5 00
1 suit		7 50
1 do		8 00
1 coat		3 00
1 do and pants		6 00
1 do		6 00
1 suit		8 00
1 C. and P		6 00
1 suit		7 00
5 do. at 9		45 00
16 do., 7.50		120 00
		355 00
Am't over		353 00
6 suits, 6.00		36 00
29 do., 8.50		246 50
28 do		228 00
29 do., 8.00		232 00
29 do., 8.00		232 00
24 do., 10.00		240 00
23 do., 8.00		184 00
29 do., 8.00		232 00

	26 do., 9.00	234 00
161	44 do., 7.00	308 00
	36 do., 7.00	252 00
	43 do., 7.00	301 00
	40 do., 7.00	280 00
	42 do., 7.00	294 00
	31 do., 7.00	217 00
	38 C. and V., 81; Ford, 2.50	375 00
	28 C. and V., do., 12.50	350 00
	48 O. coat-, spring, 8	384 00
	38 spring O. coat-, 8.00	304 00
	91 pants, odd, 1.25	159 25
	75 do. " 1.70	131 25
	71 do. " 2.50	177 50
	71 do. " 2.50	177 50
	48 do. " 2.50	120 00
	51 do. " 3.00	153 00
	51 C. and V., 3.00	153 00
	368 child. suits, 1.50	552 00
	33 odd pants, 2.50	82 50
	20 do., .50	10 00
	31 C. and V., 1.25	38 75
	28 do., 1.50	42 00
	55 odd pants, 2.75	151 25
		7,232 50
	Am't over	7,232 50
	85 boys' suits, 3.00	255 00
	19 do., 3.00	57 00
	52 child. pants, .50	26 00
	493 coats, .25	123 25
	178 ser. C. and V., 1.00	178 00
	19 boys' pants, 1.00	10 00
	27 vests, .50	13 50
	11 coats, alpaca, 1.25	19 25
162	5 coats, alpaca, 4	20 00
	3 bl'k-cloth coats, 4.00	12 00
	26 dusters, al., 1.50	39 00
	23 linen do., 1.00	23 00
	24 pants, 2.50	60 00
	10 vests, 1.00	10 00
	12 suits, 7.00	84 00
	4 do., 1.50	6 00
	6 C. and V., 1.00	5 00
	4 suits, 1.50	6 00
	5 pair pants, 3.00	15 00
	2 suits, 8.00	16 00
	13 doz. shirts, 7.00	91 00
	10½ " " 7.00	93 50
	13 shirts, .60	7 80

5 silk u. shirts, 3.00		15 00
3 doz. shirts, 4.00		12 00
22 do. suspenders, 1.50		33 00
22 doz. w. shirts, 2.00		44 00
64 canes, 5 cents		3 20
5 fan. stripe shirts and vests, 1.50		7 50
12 shirts and drawers, .75		9 00
20 undershirts, .50		10 00
3 doz. do., 3.00		9 00
		8,525 50
Am't over		8,525 50
1 doz. white shirts		3 00
1 doz. —		4 50
20 shirts, .50		10 00
8 fan. shirts and vests, .75		6 00
3 doz. scarfs, 1.50		4 50
39 doz. do., 1.50		58 50
163 1½ — light gloves, 6.00		9 00
22 pr. Perri do., 1.50		33 00
10 pr. gloves, .50		5 00
22 " do., 1.00		22 00
46 " do., 1.00		46 00
22 doz. scarfs, 3.00		66 00
76 gen. coats, 75c		57 00
40 doz. scarfs, 3.00		120 00
4 doz. do., 1.25		5 00
6 do. shirts, 3.50		21 00
30 shirts, 60c		18 00
3½ doz. do., 9.00		31 50
1 do.		9 00
10 doz. drawers, 2.00		20 00
5 shirts, 1.00		5 00
38 do., 1.00		38 00
2½ doz. w. shirts, 7.00		17 50
15 doz. do., 7.00		105 00
9½ do. do., 7.00		66 50
9 do. hose, 1.75		15 75
5 shirts, 50c		2 50
3 doz. gloves, 75c		2 25
8 pr. do., .50		4 00
7 " do., .50		3 50
10 " do., .25		2 50
9 " do., .50		4 50
		9,341 50
Am't over		9,341 50
20 shirts and drawers, .50		10 00
5 night caps, .25		1 25

4 pr. gloves, .50		2 00
1 shirt and drawers		1 00
164 18 do., .60		10 80
1 lot buttons		50
1 lot baby —		50
4 doz. shirts, 3.00		12 00
1½ do. do., 2.00		3 00
10 do. gloves, 6.00		66 00
1 do. do		6 00
5 do. shirts, 6.00		30 00
1 lot hosiery		25
17 doz. meri. shirts & drawers, 3.00		51 00
2 doz. white shirts, 9.00		18 00
14 do. col'd do., 9.00		126 00
4 do. white do., 6.00		24 00
6½ do. " do., 7.00		45 50
51 do. socks, 2.00		102 00
38 do. do., 2.25		85 50
31 do. do., 3.50		108 50
90 collar box-, 8c		7 20
6 overshirts, 15c		9 00
6 do., 1.00		6 00
12 do., 75c		9 00
1 lot scarfs		2 50
3 boys' fl. suits, 2.50		7 50
7 shirts, flannel, .80		5 60
40 " waists, .50		20 00
12 child. suits, 2.50		30 00
2 do., 2.50		5 00
18 doz. scarfs, 1.50		27 00
		10,168 10
Am't over		10,168 10
14 doz. ties, 1.25		17 50
15 doz. do., .75		11 25
165 189 silk hdf., .50		94 50
384 bows, 5c		19 20
1 lot lin., col'd		5 00
1 " odd gloves		5 00
204 pr. socks, .25		51 50
208 doz. scarfs, 20c. doz		41 60
1 lot men's bosoms		3 00
13 cam., 1.25		16 25
7 do., 2.00		14 00
8 do., 3.50		28 00
21 brushes, .20		4 20
6 cigar cases, .25		1 50
2 toilet cases, 1.00		2 00
82 pocket-books, 40c		32 80
6 cigarettes cases, .20		1 20

23 pocket-books, .40	9 20
12 do., .05	60
2 hand-glasses, .50	1 00
3 do. cases, .50	1 50
12 pocket-books, .50	6 00
17 do., .02	34
8 garte-s, .20	1 60
Asso. tooth-brushes	1 00
Do. combs	1 00
49 doz. scarfs, .05	2 45
90 do. ties, .05	4 50
79 white bows, .05	3 95
1½ doz. plk. do., 1.50	2 25
3 do. ties, 3.00	9 00
1 doz. plk. sat'n, 2.00	2 00
	10,562 49
166 Am't over	10,562 49
11 shawl-straps	50
1 doz. shirts	3 00
1 do. do.	4 00
1 do. do.	3 00
1½ do. do., 3.00	4 00
7 flannel shirts, .20	1 40
31 doz. susp., 1.25	38 75
1 lot paper collars	2 00
84 white vests, .50	42 00
8 overalls, .25	2 00
10 doz. wo-lan shirts, 4.00	40 00
4 doz. col'd do., 9.00	36 00
32 " " do., .95	24 00
6 doz. " do., 6.00	36 00
110 pr. drawers, .25	27 50
21 bathing suits, .20	4 20
32 do. do., 1.00	32 00
4 do. do., 25c	1 00
165 undershirts, 25c	41 25
108 do., 15c	16 20
27 flannel do., 75c	20 25
93 night shirts, .60	43 80
38 " do., .40	15 20
18 " do., .75	13 50
1 lot lin. hdf.	75 00
19 rubber coats, 1.50	28 50
28 gossamers, .75	21 00
54 do., .75	40 50
51 rubber coats, 2.00	102 00
17 hats and leggins, .10	1 70
3½ doz. shirts and drawers, 3.00	10 50
	11,296 24

167	Am't over	11,296 24
	185 hats, straw, 25c	46 25
522	polo shirts, 1.00	522 00
9½	— jean drawers, 4.50	42 00
117	balbriggan gauze shirts, .25	29 25
8	drawers do., 4.00	32 00
336	gauze shirts, .20	67 20
74	do., .25	18 50
8½	doz. do., 3.00	25 50
113	do., .30	33 90
19	satchels, .60	11 40
2	do., 3.00	6 00
11	do., 2.00	22 00
14	do., 1.00	14 00
57	canes, 50c	28 50
235	umbrellas, 1.50	352 50
13	pr. drawers, .25	3 25
9	" do. do., .50	4 50
11	" do. do., .75	8 25
16	" do. and shirts, 1.00	16 00
32	" do. and do., .50	16 00
11	" do. and " 1.50	16 50
28	" do. and " .25	7 00
22	" do., 1.50	33 00
9	" do., 2.00	18 00
24	" do., 1.50	36 00
12	" do., .50	6 00
16	" do., 1.50	24 00
32	" do., 1.00	32 00
18	" do., 1.25	22 50
42	" do., 1.00	42 00
13	" do., 1.00	13 00
16	" do., 100	16 00
		12,861 24

168	Am't over	12,861 24
	29 shirts and drawers, 1.50	43 50
35	doz. shirts and drawers, 4.00	140 00
30½	do., 3.50	106 75
3	do., 6.00	18 00
2½	do., 3.50	7 30
16	draw- and shirts, 7.50 doz	10 00
22	do., .60	13 20
183	w. shirts, .30	54 90
54	do., .30	16 20
45	do., .30	13 50
7½	doz. ties, 1.00	7 50
400	ties, 20c	80 00
464	hdf., .20	92 80
44	shirts, .60	26 40

22 do., .40	8 80
60 scarf-, .30	18 00
50 shirts and drawers, .30	15 00
13 do., .50	6 50
430 suspenders, .25	107 50
6½ doz. shirts and drawers, 4.50	29 25
707 collars, 10c	70 70
450 pr. half hose, .20	290 00
20 doz. ties, .05	1 00
28 pr. suspenders, .15	4 20
8 pr. drawers, .25	2 00
8 shirts, 1.50	12 00
7 drawers and shirts, .50	3 50
24 ties, .25	6 00
35 drawers, .25	8 75
12 shirts, .33⅓	4 00
½ doz. night do., 7.50	3 75
½ " w. shirts	1 00
	14,083 25
169 Am't over	14,083 24
½ doz. drawers, 2.00	1 00
33 scarfs, .10	3 30
7 hdf.	2 50
7 shirts	7 50
3 pr. soc., .15	45
2 w. shirts, .25	50
7 pr. susp., .20	1 40
3 flan. shirts, .75	2 25
11 w. shirts, .25	2 75
18 col'd shirts, .75	13 50
36 umbrellas, .50	18 00
175 white shirts, .60	105 00
25 do., .75	18 75
36 do., .75	42 00
35 do., .75	26 25
37 wo-*lans* —, .62	22 94
7 canes, .30	2 10
Jewelery	125 00
3 doz. scarfs, .50	1 50
12 doz. scarfs, 3.00	36 00
200 ties, 15c.	30 00
290 scarfs, .20	58 00
132 pr. cuffs, .20	26 40
600 " do., .10	60 00
9 doz. scarf-, 3.00	27 00
125 hats, 1.50	187 50
6 do., 1.00	6 00
31 do., 1.25	38 75
29 do., 1.25	36 25

10	do., 1.50	15 00
22	do., 75c	16 50
45	do., 75c	33 75
		15,051 08
170	Am't over	15,051 08
	11 hats, 1.50	16 50
13	hats, 2.00	26 00
48	do., 2.00	96 00
19	do., 1.50	28 50
6	do., 1.00	6 00
28	do., 1.50	36 00
3	do., .75	2 25
24	do., 1.50	36 00
18	do., .50	9 00
58	do., 1.50	87 00
72	do., 1.00	72 00
32	do., .25	8 00
58	O. coats, 10.00	580 00
90 suits, 73 do.,	Henry 9.00	810 00
	Henry 10.00	730 00
		$17,594 33

We, the undersigned, at the request of Sam'l Bieber, assignee of Justus Hollander, have appraised the stock of clothing, hats, caps, gents' furnishing, valises, umbrellas, canes, &c., &c., in store 1217 Penna. Ave. N. W., as per the foregoing inventory, as of the value of seventeen thousand five hundred and ninety-four $\frac{33}{100}$ — ($17,594.33).

Washington, D. C., June 23rd, 1886.

ISADORE SAKS.
MAMS HAMBURGER.
JAS. W. RATCLIFF.

171 EXHIBIT W. H. S. No. 1.

Fixtures.

1	stove	3 00
2	show-cases	6 00
3	do., 7.00	21 00
11	tables, 3.00	33 00
9	pine shelving	2 00
1	mirror	5 00
1	safe	50 00
1	cashier's desk	3 00
1	clock	2 00
2	dressing-rooms	1 00
	East shelving	25 00
8	counters, 3.00	24 00

West shelving	4 00
3 mirrors, 5	15 00
1 pier mirror	25 00
3 show-cases and stand, 10	30 00
1 rack	2 00
Window fixtures	2 00
Stand	1 00
Step-ladder	1 00
4 gas fixtures, 2	8 00
	263 00

We also appraise the fixtures therein, as per the foregoing inventory, as of the value of two hundred and sixty-three ($263) dollars.

June 23, '86.

ISADORE SAKS.
MAMS HAMBURGER.
JAMES W. RATCLIFF.

172 *Entry in Order Book* 11, *Page* 140.

FECHHEIMER *et al.* *vs.* BIEBER *et al.* } 10107, Equity Docket 26.

The clerk will please calendar this cause for hearing.

LEON TOBRINER,
For Defendants.

May 13, '90.

Calendared as ordered.

BY THE CLERK.

'90, 5, 13.

Decree Dismissing Bill.

Filed October 15, 1890.

In the Supreme Court of the District of Columbia.

MARTIN FECHHEIMER *et al.* *vs.* JUSTUS HOLLANDER *et al.* } No. 10107. Equity.

This cause coming on to be heard upon the complainants' bill, the answer of defendants, and the depositions taken by complainants, and having been argued by counsel for the respective parties and duly considered, it is by the court, this fifteenth day of October, A. D. 1890, ordered, adjudged, and decreed that complainants' bill be, and the same is hereby, dismissed with costs, to be taxed by the clerk.

By the court:

A. C. BRADLEY, *Justice.*

S. S.

From the above decree the plaintiff- appeals to the court in general term.

S. S. HENKLE.

173 *Decree in General Term.*

Filed April 22, 1892.

In the Supreme Court of the District of Columbia, in General Term.

FECHHEIMER *et al.*
vs.
HOLLANDER *et al.*

This cause coming on to be heard on appeal from the special term, and having been heard and considered, it is by the court, this 22nd day of April, A. D. 1892, ordered, adjudged, and decreed that the decree of the court in special term be reversed; and it is further ordered, adjudged, and decreed that the deed of assignment made by the defendant Hollander to the defendant Samuel Bieber, described in the proceedings, be, and it is hereby, declared to be fraudulent and void as against the complainants, and that said complainants do have and recover from the said defendant Bieber the amount of their judgment set out in the bill of complaint, together with their costs in this cause, to be taxed by the clerk; and it is further ordered that this cause be remanded to the special term for further proceedings.

By the court:

E. F. BINGHAM,
Chief Justice.

174 MONDAY, *April* 25, 1892.

Session resumed pursuant to adjournment.

Present: Chief Justice Bingham and Justices Cox and James.

* * * * * * *

MARTIN S. FECHHEIMER *et al.* *vs.* JUSTUS HOLLANDER *et al.* 10107. Equity Cal. 124, Oct., '91, Term.

Now come Justus, Willie, James, Theodore, and Edward Hollander, Samuel Bieber, Julius Lansburgh, Elias Travers, National Metropolitan Bank, Charles Baum, A. Kaufman, Daily Post Company, National Republican Company, Evening Star Company, William H. Slater, John Elliott, Charles C. Glover, Thomas Hyde, E. F. Riggs, Thomas L. Riggs, Alexander Elliott, and National Bank of Washington, all the defendants in the above-entitled cause, by their solicitor, Leon Tobriner, and in open court pray an appeal to the Supreme Court of the United States from the decree entered herein on the 22d day of April, 1892, the solicitor for the complainants, Gen. S. Henkle, being also present, and such appeal is allowed.

Order for Extending Time for Filing Record in S. C. U. S.

Filed May 6, 1892.

In the Supreme Court of the District of Columbia.

MARTIN FECHHEIMER *et al.*
vs.
JUSTUS HOLLANDER *et al.* } Equity. No. 10107.

An appeal to the Supreme Court of the United States having been taken in open court from the final decree of this court in general term, passed herein on the 22nd day of April, A. D. 1892,
175 and good cause having been shown to this court why the record cannot be prepared and transmitted to the said Supreme Court of the United States within thirty days from the date of said appeal, it is, this 5th day of May, A. D. 1892, ordered that the time for filing said record in the said Supreme Court be, and the same is hereby, enlarged to sixty days from the date of said appeal.

By the court:

E. F. BINGHAM,
Chief Justice.

THURSDAY, *June* 16, 1892.

Session resumed pursuant to adjournment.

Present: Chief Justice Bingham and Justices Hagner and James.

* * * * * * *

MARTIN FECHHEIMER *et al.*
vs.
JUSTUS HOLLANDER *et al.* } 10107. Equity.

An appeal to the Supreme Court of the United States having been taken in open court from the final decree of this court in general term, passed herein on the 22nd day of April, A. D. 1892, and good cause having been shown to this court why the record cannot be prepared and transmitted to the said Supreme Court of the United States within thirty (days) from the date of said appeal, it is, this 16th day of June, A. D. 1892, ordered that the time for filing said record in the said Supreme Court be, and the same is hereby, enlarged to ninety (90) days from the date of said appeal.

By the court:

E. F. BINGHAM.

176 SATURDAY, *July* 16*th*, 1892.

Session resumed pursuant to adjournment.

Present: Associate Justices Hagner and James.

* * * * * * *

MARTIN FECHHEIMER *et al.*
vs.
JUSTUS HOLLANDER *et al.* } 10107. Equity.

An appeal to the Supreme Court of the United States having been taken in open court from the final decree of this court in general term, passed herein on the twenty-second (22) day of April, A. D. 1892, and good cause having been shown to this court why the record cannot be prepared and transmitted to the Supreme Court of the United States within thirty (30) days from the date of said appeal, it is, this sixteenth (16) day of July, A. D. 1892, ordered that the time for filing said record in the said Supreme Court be, and the same is hereby, enlarged to one hundred twenty (120) days from the date of said appeal.

By the court:

CHARLES P. JAMES, *Justice.*

177 In the Supreme Court of the District of Columbia.

FECHHEIMER, GOODKIND & CO.
vs.
JUSTUS HOLLANDER, SAMUEL BIEBER, and Others. } Equity. No. 10007.

Mr. Justice JAMES delivered the opinion of the court:

On the 7th of July, 1886, the complainants recovered judgment in this court against the defendant Hollander for the sum of one thousand dollars, with interest, at the rate of seven per cent. per annum, from the fifteenth day of February, 1886, upon which execution was issued and returned *nulla bona*. On the 15th of June, 1886, Hollander, who had for several years been engaged in the clothing business in the city of Washington, made a deed of assignment to the defendant Bieber of all his property, excepting his household furniture, but including all the stock in trade, fixtures, etc., upon the premises known as "No. 1217 Pennsylvania avenue." At the same time Hollander was further indebted to the complainants, for goods purchased on the 2nd, 7th, and 15th of April, 1886, to the amount of $1,846.50; and the complainants held his note for $1,000.00, dated February 15th, 1886, payable five months after date, with interest at the rate of seven per cent. per annum until paid.

The bill prays for discovery by the defendant Hollander concerning certain matters and for the appointment of a receiver, and asks that in final hearing the deed of assignment to Bieber shall be declared fraudulent and void as against the plaintiffs and decreed to be cancelled, and that out of the proceeds of the sales of the goods the amount found due to the plaintiffs be ordered to
178 be paid.

It appears that all of the indebtedness of Hollander to the complainants was for goods sold to him by them.

The evidence satisfies us that at the time of his purchases from the complainants in 1886 the defendant Hollander had only about 3,000 dollars' worth of stock and was indebted for more than six times that amount. In that condition of his affairs he made new purchases to the amount of $19,791.71, as stated at the argument by his counsel, or to the amount of $21,085.54, as claimed by counsel for complainants. It is shown that his experience in making sales had determined the fact that he had no ground to expect and could not have expected to sell during that season so much as one-half of the goods newly purchased by him. Without going into details, we think it enough to say that we are satisfied that he must have contemplated at the time of his purchase from complainants in 1886 the use of the goods or of a large part of the goods so purchased in applying them by assignment for the benefit of the preferred creditors afterwards actually named *afterwards* in the deed referred to. We do not mean to say that a fraudulent purchase of goods renders a subsequent assignment of them for the benefit of other creditors fraudulent as against the defrauded vendors, but we conceive that such a fraudulent purchase and subsequent assignment may be so connected by the purchaser and assignor as to constitute one transaction, and thus make the assignment a fraud intended from the beginning to affect the defrauded vendor. The transaction before us appears to us to be of that character. We are of opinion that Hollander made his purchases in the spring of 1886 with the
179 intention, if it should become necessary, to apply them in satisfaction of preferred creditors. This, we hold, made such an assignment a fraud on the vendors of those goods.

It does not appear, however, that either the assignee or the preferred creditors knew anything about the circumstances of these purchases. In other words, it does not appear that they participated in any fraud connected with the assignment. We have to deal, therefore, with the disputed question whether an assignment for the benefit of preferred creditors may be held to be void when it was the intent of the assignor to thereby defraud his other creditors, although the creditors provided for in the deed were not participants in that intent.

On this question there is some conflict in the decisions of the State courts and in the conclusions of the text books. Mr. Burrill states that it is immaterial whether the assignee or the creditors participate in the fraudulent intent of the assignor. Mr. Waite says: "Generally speaking, the subject of inquiry in these cases is the intent of the assignor or debtor, though there is authority tending to establish the rule that the fraudulent purpose sufficient to defeat the instrument must be participated in by the assignee or beneficiaries. Recognizing the general rule, elsewhere discussed, that a voluntary conveyance or gift may be annulled at the instigation of creditors without proof of an absolute fraudulent intent on the part of the donee, it would seem to follow by analogy that the cases which hold that proof that the fraudulent intent of the debtor or assignor is sufficient establish the more logical and salutary rule." On the

other hand, Mr. Bump, citing almost identically the same authorities, reaches an opposite conclusion.

180 In Cadogan *vs.* Kennett, Cowp., 434, Lord Mansfield said: "The principles and rules of the common law as now universally known and understood are so strong in every shape that the common law would have attained every end proposed by the statutes of 13 Eliz., c. 5, and 27 Eliz, c. 4." However this may be, it has been considered important in almost every State in this country to re-enact those statutes substantially. In the process of condensation new phraseology has in some cases been used, and it has been suggested that this has to some extent led to the conflict referred to. In this District, however, the statute of 13 Eliz., c. 5, is in force in its original form by transmission from Maryland. Sexton *vs.* Wheaton, 8 Wheat., 242. For reasons which will be explained later in this opinion we shall first consider the particular question before us as one of principle.

The provisions of the statute are substantially as follows: "For the avoiding and abolishing of feigned, covinous and fraudulent feoffments, gifts, grants, alienations, conveyances, * * * as well of lands and tenements as of goods and chattels, * * * which feoffments, gifts, etc. have been and are devised and contrived of malice, fraud, covin, collusion or guile, to the end, purpose and intent to delay, hinder or defraud creditors and others of their just and lawful actions, suits, debts, etc.

"Be it therefore enacted, That all and every feoffment * * * alienation, bargain and conveyance of lands * * * goods and chattels * * * to and for any intent or purpose before declared and expressed shall be from henceforth deemed and taken (only as against that person * * * whose actions, suits etc. by such fraudulent devises as aforesaid, are, shall or might be in any-

181 wise * * * hindered, delayed or defeated) to be * * * utterly void and of no effect.

"And be it further enacted, That all and every the parties to such fraudulent feoffment, gift, etc., being privy and knowing of the same or any of them, which * * * shall wittingly and willingly put in use maintain, etc., as true and done *bona fide* and upon good consideration; or shall alien or assign any of the things before mentioned, to him or them conveyed as is aforesaid * * * shall incur the penalty and forfeiture etc. * * *

"Provided also, and be it further enacted, That this act or anything therein contained shall not extend to any estate or interest in lands * * * goods or chattels had, conveyed or assured * * * which estate or interest is or shall be, upon good consideration and *bona fide*, lawfully conveyed or assured to any person not having at the time of such conveyance or assurance, to them made, any manner of notice or knowledge of such covin, fraud or collusion as aforesaid."

Stated in brief terms, these provisions declare that every alienation of real or personal property made to the end and intent of hindering, delaying, or defrauding the creditors of the alienor shall be

of no effect as an alienation except when such alienation is made to an innocent purchaser for a valuable consideration.

The statute contains a plain affirmance of what was already a principle of the common law, namely, that it is a right of the creditor that his debtor's means of payment should be applied to the satisfaction of his debt. Although this is only a right to have an action for the enforcement of such application, it has such a relation to the property itself that a fraudulent disposition thereof is an immediate and direct injury to the creditor. His right
182 controls the debtor. It is only an application of this principle to say that, for the prevention of any fraud on him, the creditor's right is superior not only to the debtor's right, but to that of any third person who takes the debtor's place in such a way that he acquires no separate right of his own by which he has no new better claim to immunity. If such third person does no act which originates in him a better right than that of the debtor the law regards him as having the same status. In that case his innocence of any fraudulent intent will not protect him. The question is simply one of the status; in short, he is treated as simply not having become a new owner; but when a third person does some act or gives something in exchange for the debtor's property he acquires an original right to it, provided he has acted properly in undertaking to become owner at all. It is then for the first time that any inquiry into the propriety of his conduct arises, and the question to be considered is whether, under all the circumstances, he had a right as against the creditor to become owner of what the debtor should have applied to the payment of his debt. This elementary principle is formulated by saying that he must appear to have become owner in the usual manner—that is to say, by purchase for value exchanged for the property in good faith and without notice of any reason why he should not acquire it. On principle, then, a third person who merely takes the debtor's status assumes that status subject to whatever impaired the debtor's capacity and is not helped by his own innocence of any fraud in fact, and on principle his own innocence will protect him in the other cases. This principle, we conceive, explains the meaning of the statute of 13 Eliz., c. 5, and shows that participation in the fraud of the alienor
183 becomes a test question as to the rights of the alienee only when the latter is a purchaser for a valuable consideration. To apply this test, then, the question in cases of general assignment for the benefit of creditors is whether the assignee or the creditors can properly be considered purchasers for valuable consideration.

As a matter of fact this test has been applied in all of the well-considered State decisions, and in the commercial States it has been held that the creditor does not become such a purchaser by means of the trust. In Griffin *vs.* Marquardt, 17 N. Y., 30, the court of appeals of New York said: "An assignee in trust for the benefit of creditors is not a purchaser for a valuable consideration, however innocent he may be of participation in the fraud intended by the assignor. The uprightness of his intentions, therefore, will not uphold the instrument, if it would otherwise for any reason be ad-

judged fraudulent and void." In Knowles *vs.* Lord, 4 Whart., 500 (506–'7), the supreme court of Pennsylvania, speaking through Seargeant, J., said: "Neither the assignees or creditors in any sense of the word purchased these goods. * * * They were assigned in common with all the estate of the assignors, the assignors alone prescribing the terms of the assignment, the methods of appropriation, the subsequent sale of the property by the assignees to raise the funds, and the persons who were to participate in them, as well as the order and conditions according to which they were to be distributed. * * * It would be a solecism to call such a transaction a sale or such a grantee a purchaser or to apply these terms to the creditors.

* * * Such a conveyance cannot be called a sale or such creditor a purchaser. * * * A real purchaser giving value for
184 property in the course of business innocently and acting on the faith of possession and other apparent marks of ownership is favored for the support of trade and encouragement of fair dealing, and may sometimes obtain a better title than his vendor; but a voluntary assignment by a debtor has never been considered as placing the assignee in any better situation in point of equity than the assignor himself was; he takes the estate subject to all outstanding equities, liens, incumbrances, and dealings between the assignor and others."

We have quoted this case at some length because it demonstrates clearly the principle on which assignees and creditors are denied the protection given by the fourth section of the statute of 13 Eliz. It has been said that the payment of debt constitutes a valuable consideration; this case points out that something must be given up in exchange to constitute the alienee a purchaser within the meaning of the statute.

It is worth while to observe that the later decisions in some of the States which adopted the doctrine that an assignment for the benefit of creditors could be held void only when the creditors participated in the fraudulent intent of the assignor indicate that a different conclusion would be reached if that question were still open. In the Governor *vs.* Campbell, 17 Al., 566 (571), Davgan, C. J., who delivered the opinion of the court, said: "The fifth charge was that if I. M. Frion intended to delay, hinder, and defraud his creditors, but the trustees and preferred creditors did not join in that intent, the deed was valid. If the question raised by this charge could be considered — open one in this court I should willingly hold that the court erred, for the fraudulent intent of the grantor must render the deed void as against creditors in-
185 tended to be defrauded by it unless the grantee can place himself on a ground or in a condition not to be affected by the fraud, and I know of no condition that such a grantee can assume to avoid the effect of the fraudulent intent of the grantor unless it be that of a *bona fide* purchaser for a valuable consideration without notice. But we are satisfied that the previous decisions of this court settle the question that the fraudulent intent of the grantor alone in a deed of trust cannot affect the rights of the cred-

itors intended to be secured by it unless they have participated in that intent."

And in Hunt *vs.* Weimer, 39 Ark., 70, 75, the court used this language: "Perhaps the rule which requires the grantee to participate in the fraud in order to avoid the deed (a deed of assignment) has no just application, except in case of purchasers or persons who have parted with some valuable right."

It is claimed, however, on the part of the defendants that the Supreme Court of the United States has settled the rule that in all cases of assignment for the benefit of creditors the participation of the creditors in the assignors' fraudulent intent must be shown in order to avoid the assignment. We have therefore to examine carefully the effect of the decisions referred to.

In the case of Clements *vs.* Berry, 11 How., 398, it appeared that a deed of trust for the benefit of preferred creditors had been made by Berry in immediate anticipation of a judgment against him from which the plaintiff was omitted. Mr. Justice McLean, speaking for the majority of the court, said: "The trustee in this case cannot be considered a purchaser, as the assignment was made to him not on purchase for a valuable consideration, but for the benefit of certain creditors." We refer to this not as an adjudication of this
186 question, but as evidence that the previous decision in the cases of Marbury *vs.* Brooks, 7 Whea., 558, and Brooks *vs.* Marbury, 11 Wh., 78, were not then understood by the Supreme Court to have gone on the ground that an assignment for the benefit of creditors operated to make either the assignee or the creditors purchasers for a valuable consideration.

Those decisions, however, have since been said to have held that in attacking an assignment for the benefit of creditors it is always necessary to show fraud on the part of the creditors as well as on the part of the assignor. This construction involves an assumption that those cases also held that the creditors were purchasers under the assignment. We think the court plainly distinguished creditors as not purchasers by operation of the statute. In 7 Wh., 579, Ch. J. Marshall described the assignee as "the agent of Fitzhugh (the assignor) to sell his property and pay his debts in the order prescribed by himself." That case recognized the creditors simply as creditors. Again, in 11 Wh, 87 (Brooks *vs.* Marbury), the same learned judge said: "He is the trustee or agent of Fitzhugh (assignor) to perform an act for him which his situation disabled him from performing in person. This act was entirely consistent with law; it was to sell his property and apply the proceeds to the payment of creditors of a particular description in the first instance and afterwards to creditors generally. His right to give the preference is not questioned nor is the validity of the consideration, so far as it moved from the creditors, infected with any vicious principle." In speaking of the debt furnishing a consideration, the court was occupied in both of these cases in showing that there was valid consideration for the arrangement to apply "the pro-
187 ceeds to the payment" of the proceeds to the banks. That the banks became purchasers of the matters assigned with a

view to this payment was an unnecessary hypothesis and was not indicated by anything said in those cases.

Nevertheless, it is claimed that the Supreme Court has held in a later case that the doctrine of those two cases was that no assignment for the benefit of creditors can be held void on the ground that it was made in fraud of creditors unless creditors appear to be participant in the fraud of the assignor.

In Emerson *vs.* Seuter, 118 U. S., 3, the case under review was governed by the construction given to the statute of Arkansas by the courts of that State. The court announced that such must be the law of the case. After referring to the decisions of the supreme court of Arkansas, according to which a general assignment for the benefit of creditors could not be held void unless it should appear that the creditors participated in the fraudulent intent of the assignor, Mr. Justice Harlan added: "The rule announced by the supreme court of Arkansas is in harmony with the settled doctrines of this court and accords with sound reason. Marbury *vs.* Brooks, 7 Wheat., 556, 577; Brooks *vs.* Marbury, 11 Wheat., 78, 89; Tompkins *vs.* Wheeler, 16 Pet., 106, 118."

The question how far and in what cases we are bound as an inferior court to apply an observation made in a decision of the Supreme Court as a controlling authority on the point stated may be embarrassing. Undoubtedly it is our duty to take the law from that court, but whether we must understand that the Supreme Court intended deliberately to adjudicate the matter stated by it is a different question. According to a long line of decisions, the
188 Supreme Court, in reviewing decisions concerning the effect of an assignment for the benefit of creditors, "accepts the conclusion of the highest judicial tribunal of the State as controlling." Peters *vs.* Bain, 133 U. S., 686. By the rule of that court itself, therefore, the only guide which could be followed in Emerson *vs.* Seuter was the decisions of the highest judicial tribunal of Arkansas. What that court intended to determine in the Brooks and Marbury cases was not presented for adjudication; nor do we understand that such observations as we have referred to are stated with the purpose of laying down a rule which must be followed by the inferior courts. In view of this distinction and with the highest respect for every suggestion from the source of this opinion, we are compelled to decline to accept as authoritative the observation that the Brooks and Marbury cases establish the doctrine that in all cases of assignment for the benefit of creditors it is necessary to show that the preferred creditors participated in the fraudulent intent of the assignor before the transfer can be held void. In those cases it was distinctly held, in the first place, that preference of certain creditors did not show a fraudulent intent even on the part of the assignor, and it was held, in the second place, that a private hope to thereby escape prosecution for a felony did not impair the assignor's right to make the preference, and therefore did not constitute the fraudulent intent which would affect the validity of the transfer. In the next place, the court held that it was only when more than a hope of escape existed; in other words, only when

there was an understanding that the assignor should actually escape prosecution that any fraud of this particular kind could exist.

189 The whole scope of those decisions was that the particular fraud imputed could not exist unilaterally and could only exist by express or implied contract between the assignor and the creditors. The court was not called upon to decide and did not decide whether an actual intent on the part of the assignor was sufficient to invalidate the assignment. Having held that a private hope of escape did not constitute a disabling fact on the part of the assignor, the court could not well decide whether an actual fraud on his part alone would be sufficient to avoid his act.

We are of opinion, then, that the Supreme Court has not decided that creditors are to be regarded as purchasers for a valuable consideration under an assignment for their benefit, nor that it must appear that they were participant in the fraudulent intent of the assignor in making such assignment; therefore, being satisfied that the assignment in this case was made with intent on the part of the assignors to defraud the plaintiffs, we hold that it was void as to them, notwithstanding the preferred creditors were not participant in that fraud.

CHAS. C. JAMES, *J.*

190 *Bond for Appeal to Supreme Court United States.*

Filed May 7, 1892.

In the Supreme Court of the District of Columbia, the Sixth Day of May, 1892.

MARTIN S. FECHHEIMER, HENRY GOODKIND, Henry Kronthal, Charles E. Adler, and Charles Fishel, Copartners, Trading as Fechheimer, Goodkind and Co.,
vs.
JUSTUS HOLLANDER, SAMUEL BIEBER, *et al.*
} No. 10107. Equity.

Know all men by these presents that we, Justus Hollander, Samuel Bieber, Charles Baum, and Rudolf Goldschmid, are bound unto the above-named Martin S. Fechheimer, Henry Goodkind, Henry Kronthal, Charles E. Adler, and Charles Fishel in the sum of ten thousand dollars ($10,000.00), to be paid to the said Martin S. Fechheimer, Henry Goodkind, Henry Kronthal, Charles E. Adler, and Charles Fishel, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this sixth (6) day of May, 1892.

Whereas the above-named Justus Hollander, Samuel Bieber, and all the other defendants in the above-entitled cause have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is such that if the above-named Justus Hollander, Samuel Bieber, and the said other appellants shall prosecute their said appeal to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and
191 remain in full force and virtue.

JUSTUS HOLLANDER. [SEAL.]
SAMUEL BIEBER. [SEAL.]
CHARLES BAUM. [SEAL.]
RUDOLF GOLDSCHMID. [SEAL.]

Sealed and delivered in presence of—
J. W. PRICE.
S. NORMENT KING.

Approved the 7th day of May, 1892.

E. F. BINGHAM,
Justice S. C., D. C.

We have no objection to these sureties.

JAS. FRANCIS SMITH,
Of Counsel for Complainants.

192 UNITED STATES OF AMERICA, *District of Columbia,* } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify the foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein Martin S. Fechheimer, Henry Goodkind, Henry Kronthal, Charles E. Adler, and Charles Fishel, partners, trading under the firm name of Fechheimer, Goodkind and Co., are complainants and Justus Hollander, Samuel Bieber, Willie Hollander, Julius Lansburgh, Elias Travers, James Hollander, The National Metropolitan Bank, The National Bank of Washington, Theodore Hollander, Charles Baum, A. Kaufman, Daily Post Company, National Republican Company, Evening Critic Company, William H. Slater, Edward Hollander, and John Elliott, Charles C. Glover, Thomas Hyde, E. Francis Riggs, Thomas L. Riggs, and Alexander Elliott, partners, doing business under the firm name of Riggs and Co., are the defendants, as the same remains upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 7th day of June, A. D. 1892.

J. R. YOUNG, *Clerk.*

Endorsed on cover: Case No. 15,107. District of Columbia supreme court. Term No., 146. Justus Hollander, Samuel Bieber, Willie Hollander, *et al.*, appellants, *vs.* Martin S. Fechheimer, Henry Goodkind, Henry Kronthal, Charles E. Adler, and Charles Fishel, partners as Fechheimer, Goodkind & Co. Filed August 20th, 1892.

162 US 326

Office Supreme Court, U. S.
FILED,
MAR 12 1896
JAMES H. McKENNEY,
CLERK

162-326

In the Supreme Court of the United States

OCTOBER TERM, 1895.

No. 146.

JUSTUS HOLLANDER ET AL., APPELLANTS,

vs.

MARTIN S. FECHHEIMER ET AL., APPELLEES.

BRIEF FOR APPELLANTS.

LEON TOBRINER,
For the Appellants.

A. S. WORTHINGTON,
Of Counsel for Appellants.

LAW REPORTER PRINT WASHINGTON D. C.

Now, therefore, the condition of this obligation is such that if the above-named Justus Hollander, Samuel Bieber, and the said other appellants shall prosecute their said appeal to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and
191 remain in full force and virtue.

JUSTUS HOLLANDER. [SEAL.]
SAMUEL BIEBER. [SEAL.]
CHARLES BAUM. [SEAL.]
RUDOLF GOLDSCHMID. [SEAL.]

Sealed and delivered in presence of—
J. W. PRICE.
S. NORMENT KING.

Approved the 7th day of May, 1892.

E. F. BINGHAM,
Justice S. C., D. C.

We have no objection to these sureties.

JAS. FRANCIS SMITH,
Of Counsel for Complainants.

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JUSTUS HOLLANDER ET AL., APPELLANTS,

vs.

MARTIN S. FECHHEIMER ET AL., APPELLEES.

BRIEF FOR APPELLANTS.

The bill in this cause is filed by appellees claiming to be both general and judgment creditors of the appellant Justus Hollander. Its scheme is rather ambiguous; its leading idea being that the complainants therein are entitled to some relief, because Hollander, as is charged, did not intend to pay for the complainant's goods when he bought them. In some respects it savors of the character of an equitable replevin suit; and also of a bill for the enforcement and execution, under the direction of the court, of the trusts of a deed of assignment with preferences executed by said Hollander, which at the same time it prays may be set aside as fraudulent and void.

To this bill a general demurrer was interposed, which being sustained the complainants appealed to the General Term, where the decree below was reversed.

Fechheimer *vs.* Hollander, 6 Mackey, 512.

The defendants having answered the bill, and testimony having been taken, upon a hearing on the merits the bill was again dismissed, from which complainants therein appealed to the General Term and this decree was also reversed.

Fechheimer *vs.* Hollander, 21 D. C. 76.

The case is here on appeal from this last decree.

Have the appellees any such standing as entitles them to the relief they seek?

They file their bill, both as *general* and *judgment* creditors of the defendant, Justus Hollander.

Its object is not to rescind a contract for the sale of goods, because of fraud in the purchase thereof; but, on the contrary, complainants therein affirm such sale and seek to recover the contract price for the merchandise sold, and for that purpose they pray that an assignment, for the benefit of creditors, executed by said Hollander to the defendant Bieber "*shall be declared to be fraudulent and void as against these plaintiffs, and that it may be decreed to be set aside and cancelled.*"

I.

As *general creditors* appellees are not entitled to relief.

Before creditors can interfere with the right of a debtor to honestly apply his property toward the payment of his debts, with preferences, they must obtain a lien on the property *by judgment and execution.*

Day *vs.* Washburn, 24 How. 356.
Adler *vs.* Fenton, 24 How. 407.
Wiltshire *vs.* Norfleet, 1 Edw. Ch. 654.
Uhl *vs.* Dillon, 10 Md. 500.
Hubbard *vs.* Hubbard, 14 Md. 356.
Rich *vs.* Levy, 16 Md. 74.

Young *vs.* Frier, 1 Stockt. 465.
Stewart *vs.* Hagan, 2 Woods C. C. 215.
Wiggins *vs.* Armstrong, 2 Johns. Ch. 144.
Brinkerhoff *vs.* Brown, 4 Johns. Ch. 671, 682, 687.
Bump on Fraud Con. 452–3–4, 515, 521.
Burrill on Assignments, 673 and note.
Wait on Fraud Con. & Crdts. Bills, Sec. 73 and authorities.
Smith *vs.* R. R. Co. 99 U. S. 401.

II.

As *judgment* creditors, it does not appear that appellees have a lien.

Without such lien, they have no standing in a court of equity, for the purpose of inquiring into an alleged fraudulent assignment of property.

> "A court of equity exercises its jurisdiction in favor of a judgment creditor only *when the remedy afforded him at law is ineffectual to reach* the property of the debtor, *or* the enforcement of the legal remedy *is obstructed* by some incumbrance upon the debtor's property, or some fraudulent transfer of it.
>
> "In the first case the court, when its aid is invoked, looks only to the execution and the return of the officer to whom the execution was directed.
>
> "The execution shows that the remedy afforded at law has been pursued, and, of course, is the highest evidence of the fact. The return shows whether the remedy has proved effectual or not. . . .
>
> "In the second case the equitable relief sought rests upon the fact that the execution has issued and a specific lien has been acquired upon the property of the debtor by its levy, but that the obstruction imposed prevents a sale of the property at a fair

valuation. It is to remove the obstruction and thus enable the creditor to obtain a full price for the property that the suit is brought."

Jones *vs.* Green, 1 Wall. 330.
Bank *vs.* Earle, 110 U. S. 715.
Ex parte Boyd, 105 U. S. at p. 653.
Hendricks *vs.* Robinson, 2 John. Ch. 296.
Brinkerhoff *vs.* Brown, 4 John. Ch. 671.
McDermott *vs.* Strong, 4 John. Ch. 691.
McElwain *vs.* Willis, 9 Wend. 558.
Beck *vs.* Burdette, 1 Paige, 307.
Crippen *vs.* Hudson, 3 Kernan, 164.
Williams *vs.* Hubbard, Walker Ch. 28 (Mich.)
Mittnight *vs.* Smith, 17 N. J. Eq. 262.
2 Wait Act. & Def. 614.
Wylie *vs.* Basil, 4 Md. Ch. 329.

The rule announced in Jones *vs.* C. Green, 1 Wall. 330, is followed in Scott *vs.* Neely, 140 U. S., at page 113, where the court says:

> "In all cases where a court of equity interferes to aid the enforcement of a remedy at law, there must be an acknowledged debt, or one established by a judgment rendered, accompanied by a right to the appropriation of the property of the debtor for its payment, or, to speak with greater accuracy, *there must be, in addition to such acknowledged or established debt,* an interest in the property, *or a lien thereon created by contract or by some distinct legal proceeding.*"

See also—

Cates *vs.* Allen, 149 U. S., at page 458.

In the District of Columbia a judgment is not a lien upon personalty; a lien is created only by the issuance of an execution, and is effective only from the time it comes into the hands of the marshal.

> "No creditor can be said to be delayed, hindered, or defrauded by any conveyance until some property out of which he has a specific right to be satisfied is withdrawn from his reach by a fraudulent conveyance. Such specific right does not exist until he has bound the property by judgment, or *by judgment and execution, as the case may be*, and has shown that he is defrauded by the conveyance in consequence of not being able to procure satisfaction of his debt in a due course of law."
>
> Bump on Fr. Conv. 534.

An execution, however, must be issued in order to obtain a lien on *personal property.*

> *Id.* 536.
> Crippen *vs.* Hudson, 3 Kernan, 166.
> Mittnight *vs.* Smith, 17 N. J. Eq. 262.

If the execution is returned, the lien is lost and a bill cannot then be filed.

> Bump on Fr. Conv. 536.
> McElwain *vs.* Willis, 9 Wend. 561.

It does not appear by the bill that the remedy afforded complainants at law *is ineffectual to reach* the property of the debtor; to wit, that the property out of which satisfaction is sought, is by reason of its *nature not subject to levy or seizure;* ON THE CONTRARY, it appears that the property is such that *it can be* made the subject of a levy or seizure.

The case then made by complainants' bill brings it into the category of class second, as defined by Jones *vs.* Green and the authorities herein cited. Complainants seek satisfaction of their alleged claim out of "the goods and property remaining in the hands of the said assignee unsold." Having obtained no *specific lien* thereon, they are not entitled to the relief they pray.

In Jones *vs.* Green, 1 Wall. at p. 332, the court says:

> "In this case the bill alleges that executions were issued upon the judgments of the complainants, and were returned unsatisfied, but the allegation was not admitted, and *no proof on the subject was produced at the hearing.* The case, therefore, stands as a suit in equity commenced for the satisfaction of judgments before any attempt had been made for their collection at law by the issue of execution thereon. That the suit cannot be maintained under these circumstances is clear both upon principle and authority."

The case at bar is in the like condition. Paragraph three of the bill avers the issuing of execution and a return of *nulla bona.* The defendant, Justus Hollander, in his answer thereto says he *believes this fact to be true.* All other defendants neither admit nor deny the averment, *but demand strict proof thereof.* NO PROOF WAS EVER OFFERED.

The court below (21 D. C., at pp. 78 and 79) found that *neither the assignee nor the preferred creditors had notice or knowledge of any fraudulent intent on the part of the assignor*; but that the assignor "must have contemplated at the time of his purchase from complainants (appellees) in 1886 the use of the goods, or of a large part of the goods, so purchased, in applying them by assignment for the benefit of the preferred creditors afterwards actually named in the deed referred to;" . . . and "that Hollander made his purchases in the spring of 1866 with the intention, if it should become necessary, to apply them in satisfaction of preferred creditors;" and that this fact "made such an assignment a fraud on the vendors of those goods."

The proposition established by this opinion is, that if a merchant at the time of purchasing goods is involved, and concludes that if his venture is unsuccessful he will make an assignment for the benefit of his creditors, in the form which the law permits, such an assignment is fraudulent and void. This, we submit, is not good law.

It will not be contended by appellees that there is *proof of fraud of any kind* in the record, unless it can be inferred from the fact that the assignor was involved at the time he made the several purchases from them; but so far as this fact is concerned, it also appears that for a number of years prior to the assignment the assignor was still more involved than at the time the deed was executed, and that he had during that time always paid the debts by him contracted; so that the mere fact of insolvency at the time of contracting the indebtedness goes for naught. There is not even proof of such facts from which an intent not to pay for the goods at the time of purchase may be inferred; and if there were, *this would not be ground for setting aside the assignment.*

> "Fraud on the part of the debtor in the creation of the debt is not ground for setting aside the assignment."
>
> Bump. on Fraudulent Convey., 357 and 358 and note.
>
> Horwitz *vs.* Ellinger, 31 Md. 492.
>
> Talcott *vs.* Rosenthal, 22 Hun. 573.
>
> Spencer *vs.* Jackson, 2 R. I. 35.
>
> Rheinhardt *vs.* Bank of Ky., 6 B. Mon. 255.

The bona fides of the preferred debts is not questioned.

The answers of the various preferred creditors who are parties defendant are full and responsive. And the answer of the defendant Justus Hollander to the interrogatories propounded to him in the bill gives a full and detailed statement of their origin, shows their *bona fides* and is not contradicted, and no evidence was adduced to prove the *mala fides* of any preferred debt.

Under the law of the District of Columbia at the time of the execution of the deed of assignment preferences were permitted.

Two questions arise upon the record :

A. Is the intent of the grantor alone the criterion by which the bona fides of a deed of assignment is to be ascertained ?

B. Does the record disclose a fraudulent intent on the part of grantor ?

A—Is the intent of the grantor alone the criterion by which the bona fides of a deed of assignment for the benefit of creditors is to be ascertained ?

Certain general principles bearing upon the decision of this question are well recognized:—

1. When a voluntary conveyance is made by an insolvent debtor—the conveyance being without consideration—all agree that it is immaterial whether there is any intent on the part of the grantee to defraud or not. Indeed, it is immaterial whether any such intent exists on the part of the grantor, because if he be insolvent he cannot give away his property so as to bind his creditors. He must be just before he can be generous.

2. When an insolvent debtor applies his property to the payment of some of his just debts, even though, indeed, to the entire exclusion of other creditors, and with intent to prevent excluded creditors from realizing anything on their claims, the conveyance is nevertheless valid.

On these two propositions no authorities are necessary.

3. A case between these two is that of the sale of his property by an insolvent debtor. Here the question is, assuming the conveyance to be made on the part of the debtor for the purpose of defrauding his creditors, whether the grantee knew and *participated* in the fraudulent intent. If he does so participate, the deed is void as against the injured creditors; otherwise it stands against the world.

From the numerous authorities in support of the proposition that the purchaser under such circumstances must not only have knowledge of the debtor's fraudulent intent, but must himself in some way participate therein, we have collected the following: They are all cases precisely in point, and each of them is well worthy of the careful examination of the court in this case:

Kohn *vs.* Clement, 38 Iowa, 589.
Ford *vs.* Williams, 3 B. Monroe, 557.
Beaurman *vs.* Van Buren, 44 Mich. 499.
Holmes *vs.* Braidwood, 82 Mo. 615.
Root *vs.* Reynolds, 32 Vermont, 139.
Greenlow *vs.* Blung, 59 Tex. 124.

Other cases to the same effect are—

Moline Wagon Co. *vs.* Ren, 14 Fed. Rep. 155.
McLarrin *vs.* Thompson, 40 Me. 284.
Hamilton *vs.* Staples, 34 Conn. 316.
Banfield *vs.* Whipple, 14 Allen, 13.
Bear's Estate, 60 Pa. St. 430.
Fraser *vs.* Passage, 53 Mich. 551.

An examination of these cases would show the clear distinction made between one who purchases the property of an insolvent debtor, and one who takes the property of an insolvent debtor in payment of the pre-existing debt. The former is termed a "volunteer" or a "mere purchaser," while the latter, who is simply receiving payment of a just debt, cannot be guilty of fraud by that act, no matter what may be the intent of the grantor himself. He may intend what he thinks to be a fraud, but what he does the law considers an innocent act.

The question in this case is, what is the proper application of these well-settled principles to the case where the insolvent debtor applies his property to the payment of some of his creditors to the exclusion of others, with the intent,

let us say, to hinder, delay, and defraud such creditors, when the conveyance is made, not directly to the creditors, but to a third person, who is to convert the property into money and to pay it to the creditors according to their respective claims?

On principle we submit that it is impossible to draw any distinction injurious to the preferred creditors, between such a case and those in which the insolvent debtor pays the preferred creditors the money with his own hands. Preferred creditors—indeed, all the creditors where there is a residuary gift to the creditors at large—are presumed to accept the assignment the moment it is made (Tompkins *vs.* Wheeler, 16 Peters, 118). Immediately upon the acceptance of the assignment by the trustee it becomes irrevocable. The slightest expression in the instrument purporting to secure to the grantor the right of revocation, for however brief a space of time, invalidates the whole instrument. The law will not imply a provision which if expressly inserted would make it void.

Burrill on Assignments, Chap. 27, Sec. 361.
Bump on Fraudulent Conveyances, 3rd edition, page 380.
Waite on Fraudulent Conveyances, Sec. 358.
And see the leading case on this subject of Riggs *vs.* Murray, 2 Johnson, 565.

Therefore, in legal effect, as soon as the assignment is made, the property belongs to the beneficiaries. The assignor and the assignee together cannot destroy, or in any way affect the right of the creditors. If the assignee did wrong or intended to do wrong on the application of any creditor, he may be removed and an honest man put in his place. Why should not the question of whether the conveyance is made with intent to hinder, delay, and defraud his creditors be decided upon the same principles which are universally applied where the property is given directly to the preferred creditors?

That our contention in this regard is correct is settled by a line of decisions of this court, each one of these decisions refer back to the preceding one, or some one of them. In announcing these decisions this court has stated that it is laying down a general rule at law, and not deciding the law in any particular State. Two of these cases were from the District of Columbia. These cases, in order, are—

Marbury *vs.* Brooks, 7 Wheat. 556.
Brooks *vs.* Marbury, 11 Wheat. 78.
Tompkins *vs.* Wheeler, 16 Peters, 118.
Emerson *vs.* Senter, 118 U. S. 1.
Peters *vs.* Bain, 133 U. S. 690.
Huntley *vs.* Kingman, 152 U. S. 527.
Davis *vs.* Schwartz, 155 U. S. 631.

In Emerson *vs.* Senter, 118 U. S., at page 9, this court says:

> "In Cornish *vs.* Dews, 18 Ark. 172, 181, the court says: 'And even if Cornish (the grantor) had the purpose when he made the deed of hindering and delaying creditors not provided for by it, yet if the preferred creditors were not parties or privies to his fraudulent purpose, but accepted the deed in good faith to secure the debt really due them, it would be valid as to them.' . . . 'The rule announced by the Supreme Court of Arkansas is in harmony with the settled doctrines of this court, and accords with sound reason.'"

Among other cases on this point see—

Truss *vs.* Davidson, 7 S. Rep. (Ala.) 812, 1890.
Mills *vs.* Haynes, 40 Tenn. 331.
Deering *vs.* Collins, 38 Mo. App. 73.
State *vs.* Keeler, 49 Mo. 548.
Wilson *vs.* Efler, 7 Cold. 32.
And see Burrill on Assignments, 6 Ed., Sec. 307, and Note 3.

IS THERE EVIDENCE OF A FRAUDULENT INTENT ON THE PART OF THE ASSIGNOR?

In considering the question of *fraud in fact*, it may be well to ascertain: First. What is meant by a fraudulent intent, *a mala mens*. Second. How is such an intent to be proved? Third. Upon whom rests the burthen of proving the same?

Says Bump on Fr. Convy. 353 *et seq.*:

> "The object of the statute is to prevent deeds fraudulent in their inception and intention, and not merely such as in their effect may hinder or delay creditors. It is the corrupt and covinous motive, the fraudulent intention, the *mala mens*, with which the assignment or conveyance is made, that constitutes the fraud against which the denunciations of the statute are directed, and without the existence in fact or presumed existence, of an immoral or bad intention or motive, fraud cannot be perpetrated either at common law or under the statute. Fraud depends not upon the fact of delay, but upon the character of the delay and the motive which actuates it. The statute was never intended to restrict the debtor *from paying or securing creditors whom moral duty and a sense of justice may dictate the propriety of paying or securing*, or from doing equal and exact justice to all by placing his means in a condition to that end. So long as a debtor remains in contemplation of law the absolute owner of property, it cannot be said of an appropriation of that property exclusively to the purpose of paying debts that it is a contrivance to delay, hinder, and defraud creditors. He merely exerts a power over property which the law gives him as owner for a purpose which is not in law wrongful. Such an appropriation cannot be deemed to be made with the fraudulent intent or purpose to hinder or delay, but with the higher and better intent and purpose of paying or securing all equally, or providing for those who are most meritorious. All the law can

reasonably demand is a faithful application of the debtor's property to the payment of debts, and when this object is accomplished by an assignment or deed of trust for the benefit of his creditors, the hindrance and delay which may operate to the prejudice of particular creditors is simply an unavoidable incident to a just and lawful act. Such mere incident to a lawful act does not vitiate the transfer."

The same author continues at page 357 :

"The inducements which may have led to the assignment are not to be inquired into. *The law deals with the act of the party, and not with the secret springs which prompted it.* If the assignment is such as the law authorizes and approves, the secret motives that prompted it are entirely immaterial. Even a stratagem to prevent an execution till an assignment can be made will not render it void. This is due to the fact that creditors have no lien upon a debtor's property. The dominion over it is vested in the debtor, and so long as the property continues to belong to him unaffected by liens, his conduct for the purpose of imposing upon a creditor and keeping him at bay will not divest him of that dominion, or disqualify him from making an appropriation of it for the benefit of his creditors. This, moreover, is not the kind of fraud that makes an assignment void. The only illegality which avoids it is that which makes or endeavors to make it the instrument of defeating or delaying the collection of debts. *It is not, therefore, for the same reason, competent for a creditor to vacate an assignment as to himself, while it may be good as to every one else, by showing that there was fraud or misrepresentation on the part of the debtor in the creation of the debt due him.*"

Horwitz *vs.* Ellinger, 31 Md. 492.

Talcott *vs.* Rosenthal, 22 Hun. 573.

Spencer *vs.* Jackson, 2 R. I. 35.

Rheinhardt *vs.* Bank of Ky., 6 B. Mon. 255.

And continuing, the same authority says, on page 358.

> "The only intent which will vitiate the assignment *is a fraudulent intent*; that is, an intent which the law will not permit to be carried into effect; an intent to secure some benefit to the debtor, or to withhold some right from his creditors beyond what the law permits. If this intent is expressed in the assignment, the court may declare it to be void; but if the fraudulent intent is not expressed in the assignment, then it can only be invalidated by proof that the fraudulent intent existed at the time of the execution of the assignment. An assignment can not be made the means of covering up and preserving the property for the debtor's use, or of withdrawing and protecting it from the lawful actions, remedies and demands of his creditors. If it is devised and contrived as a scheme for keeping the property under the secret control of the debtor, or for keeping it out of the market for an indefinite period, or until there shall be a rise in the prices, or for locking it up in any way for the debtor's own use and benefit, or as a means of forcing the creditors to accept a settlement, *if it is not designed in good faith for the payment of debts really owed*, but the whole transaction is conceived in collusion, malice, covin, and bad faith, and tainted with secret fraud, *it is void*."

How, then, is *the fraud in fact* upon which the attack is made on the assignment, to be ascertained?

Mr. Burrill, in his work on Assignments, at section three hundred and forty (340), page 536, lays down the rule to be:

> "It is a settled rule of law, that fraud is *never to be presumed*, but must always be proved—that it is not to be presumed in the absence of evidence. The presumption of law is *always against bad faith*. So in equity fraud is not to be presumed. The burden of fraud rests upon the party making the charge, and it must be clearly established."

Continuing, the same author, in section 341, says:

> "But though fraud cannot be presumed in the absence of evidence, it may always be presumed, that is, inferred from circumstances shown in evidence. And it is by this indirect or presumptive method, that it is in fact made out and proved—what is called direct or positive proof of fraud being rarely attainable. Hence it is well settled that fraud or fraudulent intent may be proved by circumstances. In regard to the character or strength of the evidence, in such cases, it is a further rule that fraud will not be presumed *from slight circumstances, or circumstances of an equivocal tendency,* OR CIRCUMSTANCES OF MERE SUSPICION, LEADING TO NO CERTAIN RESULTS."

Says the Court of Appeals of New York, in the case of Schultz *vs.* Hoagland et al., 85 N. Y., at page 467:

> "The case furnishes no exception to the rule that fraud is to be proved and not presumed. It is seldom, however, that it can be directly proved, and usually it is deducted from other facts, which naturally and logically indicate its existence. Such facts, nevertheless, must be of a character to warrant the inference. It is not enough *that they are ambiguous* and *just as consistent with innocence as with guilt.* THAT WOULD SUBSTITUTE SUSPICION AS THE EQUIVALENT OF PROOF. They must not be, when taken together and aggregated, interlinked and put in proper relation with each other, consistent with an honest intent, *if they are, the proof of fraud is wanting.*"

In Parkhurst *vs.* McGraw, 24 Miss., the court at page 136, commenting upon the burthen of proof, says:

> "The fraud is denied, and the consideration is fully stated in the answer. The rule of law is familiar to all in this attitude of the case. He who alleges fraud must prove it. Judge Story says that 'it is equally a rule of law and of equity that fraud is not to be presumed, but it must be established by proof,' *circumstances of mere suspicion leading to no certain results will not be deemed sufficient.*"

In the case of Vernon *vs.* Schwartz, 8 Dana (Ky.), the court in passing upon the same question say:

> "We readily concede that if the intention, in the execution of a deed, be to hinder and delay creditors, such intention entering into and producing its execution, being against the statutes and bad, will vitiate the whole deed, though it be made upon a good consideration and for the just and equitable purpose of securing the legal distribution of the assets among all the creditors. *But such bad motive or intention must be made to appear by proof and not be left to* REST UPON SUSPICION OR CONJECTURE ONLY. When the consideration is good and the terms equal and just the Chancellor should not upon slight grounds imply a bad motive. When it appears upon the face of a deed of trust that the motive for making it was to prevent a sacrifice of the property a bad motive is shown—a motive to obstruct the ordinary process of law in the subjection of property to the payment of debts, which vitiates the whole deed. So if that motive and intention be proved *aliunde* in the case before us the bad motive or intention is not apparent on the face of the deed, nor is it proved out of the deed. The counsel for the defendant infer that the motive and intention was to withdraw the property from the action of the law and provide 'salaries for friends and a comfortable support for the debtor;' we infer that the motive and intention was to do equal justice to all of his creditors, and charity will authorize the inference of the court."

And in the case of Hollister *vs.* Loud, 2 Mich., the court, at page 316, say:

> "Every conveyance of any part of the debtor's property may have the effect, in a greater or lesser degree, to hinder and delay creditors, as it withdraws from their legal grasp the means *pro tanto* of coercing their debtor. To render it fraudulent it must be done with the intent to delay or defraud; but if made with no such intent, but with an honest motive and with the higher or nobler intent and purpose of paying all equally or providing for those who are the most meritorious, it will be sustained."

Then, at page 324, the court, after an examination of the facts in the case, say:

> "We have thus examined, with some degree of minuteness, all the evidence in the case, as well as that which is furnished by the depositions of the witnesses and the answers of the assignees as well, the provisions contained in the deed of assignment itself, and we have been able to find no evidences of fraudulent intent on the part of the assignors which, in any of the cases we have read, have been held to be conclusive or strong evidence of fraud. This court held in the case of Buck *vs.* Sherman, 2 Douglass, 176, that fraud will not be presumed upon slight circumstances; the burthen of proving it rests upon the party charging it. The chief justice in delivering the opinion of the court, says: '*The proof should be so clear and conclusive as to leave no rational doubt upon the mind.*' It is said in 8 Cowan Rep., by Woodward, justice, 'that fraud may be presumed in equity from circumstances, though in law it cannot.' 1 Dessaus. 309. Other courts have held with ours that fraud must be clearly and distinctly made out and cannot be inferred from circumstances of an equivocal tendency. 23 Maine Rep. 46; 2 H. & J. 414. It is not to be lightly presumed after a denial in the answer. 4 Dessaus. 473. Nor is it to be imputed upon slight evidence. 3 Dessaus. 12. It is not to be considered as a single fact but a conclusion to be drawn from the circumstances. 2 H. & J. 219; Brogden *vs.* Walker."

The same doctrine is held by the Supreme Court of Kansas in the case of McBride *vs.* Atwell, in 34 Kansas Rep., at page 147, and finally, the Court of Appeals of Maryland, in the case of Strauss *vs.* Rose, reported in 59 Md. Rep., at page 530, say:

> "A debtor, it is admitted, may make an assignment of his property and provide for the payment of one class of creditors in preference to another. Abstractly considered, it may be more equitable to provide for

the payment of all alike, but as the debtor may, by actual payment of money, prefer one creditor to another, for the same reason he may assign his property, so long as it remains unaffected by liens, in trust, to sell the same and apply the proceeds to the payment of certain debts in preference to others. All the law requires is that the *conveyance shall be made in good faith* and upon a valid consideration. As regards the conveyance now before us, it is upon its face unquestionably a valid assignment in law. It contains no provision exacting releases of creditors, nor is there a provision or a reservation of any kind, expressly or impliedly, inuring to the benefit of the assignor. On the contrary, it is upon its face an unconditional conveyance of property in trust for the payment of creditors. But though fair and valid upon its face, it may, in fact, it is said, prove to be a mere device or contrivance to defraud creditors. This is true. It may be made for the purpose of concealing or covering up the debtor's property, or to force creditors to accept a compromise, or in pursuance of an agreement or understanding with the assignee or the preferred creditors, by which the assignors would derive some advantage or benefit inconsistent with the legal rights and remedies of creditors. If so, it is as much within the contemplation of the statute as if the fraud had been written upon its face. *The burden of proof, however, in such cases is upon the creditor assailing the assignment.* He must offer evidence from which a jury may reasonably find that, though valid upon its face, it is fraudulent in fact. This case then comes down to this, Was there any such evidence offered by the appellant? We think not. There is no proof that the assignment in question was made for the purpose of concealing the property of the assignor, nor any proof of a secret trust, nor of an understanding with a trustee, or any one else, that he was to derive any benefit from its execution, or as against the rights of creditors." . . . "The fact is, the proof shows the assignment was made upon a valid consideration, with the exception of Miss Laucheimer's claim of $350.00.

No attempt is made to impeach the debt preferred by the deed, and we see no reason to question the genuineness of her claim." . . . "The extent to which the evidence offered by the appellant goes, is to prove the insolvency of Mrs. Goldschmitt and that she *continued business and continued to buy goods after she knew or ought to have known she was unable to pay for the same.* But even in this aspect it is but just to say that her purchases during the twelve months prior to the assignment were far less than the preceding twelve months, and further than this, the record shows that in the four months preceding the assignment she bought of the appellant goods to the amount of $297.60, and during the same time paid them $260.00, leaving a balance due of only $37.60. *But this is a matter not material to this case.* The fact that she was insolvent did not prevent her from making an assignment of her property for the benefit of creditors, and even if she had fraudulently contracted debts within the meaning of the Act of 1864, this would not affect the assignment unless there was some connection between the debts thus contracted and the assignment itself, *and of this there is not a particle of proof.* On the contrary she continues *to buy and to pay as usual up to the very day* when the pressure of creditors forced her to make the conveyance.

"But in this case there is no evidence from which the jury could reasonably find a fraudulent purpose on the part of Mrs. Goldschmitt, and the assignment being valid upon its face, the court properly rejected the plaintiff's prayer, and granted the instructions offered by the claimant."

On what grounds, then, is the deed of assignment assailed. Is it, or can it be, contended the assignment is fraudulent because of any imperfection apparent upon the face of the deed?—No; or because of any unlawful reservation to the debtor?—No; or *because of its provisions* it may operate to hinder, delay, or defraud creditors?—No; or because it was made for the purpose of concealing or covering

up the debtor's property, or to force creditors to accept a compromise, or in pursuance of an agreement or understanding with the assignee or the preferred creditors, by which the assignor would derive some advantage or benefit inconsistent with the legal rights and remedies of creditors?—No. What, then, are the grounds upon which the assignment should be set aside? Examine the averments of the bill.

In paragraph five complainants say:

> "The plaintiffs insist that for a want of a description of the property conveyed or accompanying schedules of the said deed of assignment is, as to creditors not accepting it, fraudulent and void, and these plaintiffs not only do not accept it, *but utterly repudiate it as a fraud upon them.*"

And in paragraph eighteen the bill avers:

> "The plaintiffs say that if the notes which purport to have been discounted by the banks hereinbefore referred to were renewals of antecedent debts, as they probably were, the holders thereof having given no value for said assignment, occupy no better position than the fraudulent purchaser, and the plaintiffs *are in law and equity entitled to have said deed of assignment set aside as fraudulent and void as to them.*"

And it is also averred, "*on belief*," that some of the preferred debts are not *bona fide*. These are the reasons set forth in the bill why the assignment should be set aside. There is not an averment or a charge that the deed was executed by Hollander with *an intent to defraud*. The first reason (want of schedules) is abandoned. It is not relied upon by counsel in their brief, and on an examination of the authorities it will be seen that, unless required by statute, a general description embracing all the property of the debtor, of whatever nature, is the safer, inasmuch as the courts hold that where the assignment conveys by reference

to schedules annexed, and such schedules omit to describe a particular piece of property, such omitted property does not pass to the assignee.

Burrill on Assgts., Secs. 134, 135, 136–151.

But upon an examination of the deed of assignment it will be seen that all *the property owned and possessed by the assignor* is particularly described and conveyed. The deed conveys:

> "All and singular the lands, tenements and hereditaments, real estate and chattels real, and all the goods, wares, merchandise, personal property, chattels and effects belonging to said party of the first part, whether in possession or action, and all rights of action, causes of action, and all estates and interests whatsoever, whether real, personal or mixed, and all debts, sums of money, balances of account, promissory notes, bills of exchange, drafts, bonds, judgments, claims and demands, and other securities, now belonging, due or to become due or payable to the said party of the first part, including herein all the stock in trade, fixtures and paraphernalia now in and upon premises known as No. 1217 Pennsylvania avenue northwest, in said city, known as the Excelsior Clothing House, the said stock consisting of gentlemen's furnishing goods, clothing, satchels, hats and caps."

As to the second ground (that the debts preferred are not *bona fide*) there is not a scintilla of evidence offered by the complainants in any manner assailing or impeaching the genuineness of the debts preferred. The burthen is upon them to impeach, and have they in any manner attempted to do this? With respect to Preferences Nos. 1 and 2, the complainants in their bill say: "Plaintiffs believe, and so believing charge that the debt is fraudulent." With respect to the preferences to the defendant Travers they say: "Plaintiffs do not admit that these notes are for *bona fide* indebted-

ness, but deny the same, and demand strict proof thereof." The same averments are substantially made with respect to other of the debts preferred. As already said, no proof was offered by the complainants in support of these averments, but they contented themselves with calling upon the defendant, Justus Hollander, to make answer to certain interrogatories, the first of which has reference to the preferred debts, and is as follows:

> "Give the true amount of his indebtedness to each one of his preferred creditors, going back to the origin of the transaction, and stating what it was for. If there have been any renewals and payments, give the dates and amounts of such payments, and for what amounts the renewals were."

In response to this interrogatory, Hollander made answer showing the origin and history of every preference, giving the date when the loan was first made to him, the various payments thereon and renewals thereof, and showing fully the *bona fides* of every loan or transaction that is the basis of a preferred debt. *And this is all the evidence in the case* as to the preferences.

The preferred creditors have also answered under oath, setting up their claims and explaining the consideration therefor, and showing their *bona fides*. (Defendant's Rec., p. 51.) It will not, is not, and cannot be contended that there is anything in the case which impeaches the *bona fides* of any preference.

There remains but one other ground which can be urged for invalidating the deed, and this is a *mala mens*, a *fraudulent intent on the part of Hollander* in executing the assignment; an intent to commit a fraud upon his creditors by an assignment, *providing for the payment of honest debts*; an intent, concealed in the breast of the assignor, of which the complainants were ignorant; of which the assignee was

ignorant; of which the preferred creditors knew nothing, but which the complainants now contend "*is deducible* from the facts disclosed by Hollander in his answer to the interrogatories."

Denying that the answers of Hollander to these interrogatories are binding upon or admissible as evidence in behalf of complainant *against his co-defendants*, but assuming for the purpose of the argument that they are, let us examine the facts as they are disclosed from the answers to these interrogatories and the answer of Hollander to the averments of the bill and ascertain whether such a fact is *legally and fairly* deducible therefrom:

By the answer to the bill all fraudulent intent and purpose is positively and emphatically denied. Answering paragraph 8, he says:

> "He avers that his spring purchases in 1886 were made at the time said purchases had usually there-(*to*)fore been made by him, and there was nothing unusual in the amount thereof."

Answering paragraph 9, he says:

> "Defendant denies that when he made these purchases he well knew that he was hopelessly insolvent, and that he did not intend to, and knew that he could not pay for said goods, and that he concealed these facts from complainants; on the contrary he avers that he had every intention of paying for all goods purchased by him, that he had no intention of failing, nor did he anticipate such action."

And in answer to the same paragraph he continues:

> "And though your respondent's financial affairs, by reason of liabilities he was compelled to assume, had been somewhat complicated for some years prior to the execution of said deed, *and out of which defendant had by hard efforts and strict attention to business been*

> *slowly extricating himself*, yet this defendant felt assured that he would finally relieve himself of all indebtedness. And he avers that he would have succeeded in so doing if he had not been overcome by the misfortunes consequent upon a bad season and the other circumstances hereinafter set out, *that he was no more involved when he made said last purchase than he was at the time of making previous purchases and for which he duly paid.*"

And in answering paragraph 16, he says:

> "Defendant admits that shortly before the execution of said deed he was *pressed by complainants* for money, and *this pressure*, together with his inability to raise funds otherwise than from the banks, which necessarily would have entailed his further involving his relatives and friends, necessitated and precipitated his failure. He denies that for some time before his assignment he paid little or nothing upon his debts, but avers that his answer to complainants' interrogatories will show that he paid out every cent he received, *and that within sixty days before executing said deed he paid to complainants the sum of ten hundred and and forty-four 65-100 dollars.*"

But it is contended that the *mala mens*, the intent to commit a fraud, is deducible from this, that when Hollander made his purchases in the spring of 1886 he was involved; so involved, the complainants say, that it was impossible for himself to continue; that he knew this, and consequently from this fact can be deduced an intent not to pay for the merchandise bought. Following the opinion of the court in Strauss *vs.* Rose, herein cited, is there

> "any connection between the debts thus contracted and the assignment? Is there as much as an averment in the bill, that when he made his last purchases he intended to make an assignment, or bought the goods for the purpose of making an assignment of them?"

Grant that he was involved, it is admitted in his answer. The answers to the interrogatories show it, but it also appears that such was his condition continuously from the year 1879 to the date of his failure, yet he had continued paying his debts, both for merchandise and borrowed money; he had in all those seven years struggled to keep afloat, and had succeeded. *The purchases in 1886 were no more fraudulent than those of previous years, from 1879 down*; and is it to be said with these facts in mind that when, after struggling for years, he found himself unable to contiue further; when, overcome by the consequence of a bad season of business and the fact that these very complainants, his largest creditors, were pressing him for payment and threatening suit, he finally yielded to circumstances and executed such an assignment as the law permitted; that therefore this assignment, so executed, *is executed with an intent to defraud.* Is there not something more than the facts in this case necessary to prove a fraudulent intent?

Take the case of a merchant who begins with a capital, consisting mainly of borrowed money: he buys a large stock, say even greater than is justified by his capital, his expenses are heavy, and as the year rolls by the capital is absorbed by the current expenses, his merchandise bills mature, his debts for borrowed money mature, he is unable to meet either, he is pressed by creditors, and an assignment is the consequence—the stock is not even sufficient to liquidate the debts for borrowed money. Can it be contended that his assignment preferring borrowed money was executed with a fraudulent intent? The case at bar is stronger in showing good faith than the one just stated, inasmuch as the facts appearing by the answer of Hollander show that he had paid, and paid, and paid until he could pay no longer; that he had curtailed and renewed and struggled; that he had borrowed money from his friends, from the banks upon the security and indorsements of his friends and relations,

until he could obtain no further loans; that he had paid at their maturity to these very complainants, within sixty days prior to his failure, the amount of two notes, in the sum of $1,044.65; that he paid *up to the very day of his* failure, every merchandise bill or note as it matured. If Hollander intended to defraud his creditors; if he purchased merchandise with the intent of not paying for it, why did he pay anybody after he had obtained the goods? Why pay merchandise bills as they became due after obtaining the goods? Why pay notes for merchandise (among others to these very complainants) and notes for loans, amounting in all to nearly $11,000, as is shown by his answer to interrogatory Nos. 3 and 6?

These payments were made in the four months immediately preceding his failure. Why did he not put the money, the proceeds of the stock, in his pocket—convert it to his own use? If he intended to commit a fraud by executing the assignment, why did he not assign immediately after he had obtained possession of the goods? Why pay after that? Why continue his business as he had for years prior? Why, after he had the goods, borrow money when he could not realize sufficient from his sales to pay maturing merchandise bills, as appears from his answers to interrogatory No. 7. (Answer to interrogatory, p. 33.)

> ARE THESE FACTS CONSISTENT WITH A THEORY OF BAD FAITH, OR ARE THEY CONSISTENT WITH AN HONEST INTENT; and how, under the authorities, are they to be regarded?

But these are not the only facts in the case which show that Hollander was honest, and that his failure was but the result of circumstances which he could not control. Your

honors will see upon an examination of the answer to interrogatory No. 6, whereby Hollander is asked to state:

> "What payments on account of goods purchased he made between the 1st of February and the 13th of June, 1886, and what payments on an any other account whatever between same dates, to whom made, and the amounts and dates of each of said payments, item by item?"

that Hollander has given a full statement of his payments.

It is claimed as proving fraud that Hollander paid, in the five months preceding his assignment, various sums aggregating nearly $1,000 "to one Chas. Baum, no consideration appearing therefor in his account." The complainants apparantly forget that the burthen was upon them; that Hollander, *at their request*, (Rec. 103) was produced as a witness for their examination, and that they refused to examine him. Upon the same theory, every payment stated in his account as made by him between February 1, 1886, and June 13, 1886, may be claimed to be fraudulent, "no consideration appearing therefor in his answer." The burthen was upon complainants to prove a fraud. To do this they could have examined Hollander or Baum for the purpose of ascertaining whether these payments claimed by Hollander to be *bona fide* were so, but this they failed to do, and now ask this court to *presume* that they either were not made, or not *bona fide*—in other words, they ask you *to conjecture and suspect*, and upon suspicion condemn, not only Hollander, but find Baum, one of the most extensive and prominent business men in this community, guilty of assisting Hollander to defraud his (Hollander's) creditors.

The allegation of fraud is wholly overcome by the conduct of Hollander up to the very date of his assignment; such conduct is totally inconsistent with a fraudulent intent; it is only consistent with good faith. It is here also added that the full and complete manner in which

Hollander has answered the interrogatories addressed to him (these answers being filed nearly three (3) years after the filing of the bill), when he might, if intending to defraud, have given evasive or vague answers, or pretended inability to make answer, all tended to show his honesty and good faith. If there were evidence in the case tending to show an attempt by Hollander to use the assignment for his individual benefit, or showing a concealment of his assets, a conversion of them to his own use, an effort to prefer fictitious debts, or any of the links that usually go to make the chain of evidence from which fraud is deduced, then might the fact of his insolvency at the time of purchase be urged as strengthening the deduction of fraud, but these facts are wanting. There is nothing in the whole case but the fact that a debtor struggled for years to continue his business, to support his family, to pay his debts and maintain his reputation as an honest business man, and when the end came, when hope was abandoned, and he succumbed, forced thereto in part by the very pressure of these complainants, who had drawn from him, as long as there was to draw. They, *and they alone*, are the only creditors who complain. It must be borne in mind that the claim of the appellees is not wholly for goods sold him in 1886, but more than one-half of it was contracted nearly a year before the failure (Defts. Rec., 40, 41), and payments were made thereon by Hollander, as appears by his answer within sixty days of his failure, so that as to his dealings with these complainants the intent to defraud is rebutted. The following schedule gives the amount of the respective preferences showing the original amounts thereof, and how they were reduced, with references to the answers to the interrogatories (from which the extract is made), and which gives the history of each trans-

action, and which the court is particularly requested to examine:

Preference No. 3	(Deft. Rec., p. 14)	$47.50,	originally	$175.00
" 15	(" " " 11)	250.00		300.00
" 16	(" " " 10)	300.00		700.00
" 17	(" " " 8)	100.00		200.00
" 18	(" " " 13)	300.00		500.00
" 25	(" " " 11)	325.00		350.00
" 33	(" " " 9)	475.00		1,000.00
" 32	(" " " 13)	250.00		500.00
" 34	(" " " 12)	250.00		275.00
" 35	(" " " 8)	625.00		750.00
" 42	(" " " 12)	175.00		300.00
" 49	(" " " 12)	475.00		750.00
" 62	(" " " 14)	518.78		618.98
" 63	(" " "15)	1,000.00		5,000.00
" 60	(" " " 16)	100.00		500.00
" 55	(" " " 8)	825.00		850.00
Travers' Pref.	(" " 3 to 7)	6,400.00		21,500.00
" "	(" " 6)	380.00		1,000.00
		$12,796.00	orig.	$35,268.98

The other preferences are:

No. 7	(Defts. Rec., p. 13)	$200, obtained	May 4, 1886.
67	(" " " 16)	200 "	March 5, "
68	(" " " 16)	200 "	May 11, "
64	(" " " 16)	200	Current advertising bills.
65	(" " " 16)	160	
66	(" " " 16)	130	

Upon an examination of the record but one conclusion can be arrived at, and that is, that Hollander struggled; that he made every effort to continue; that he was actuated by no fraudulent intent in carrying on his business as long as he could, and that because he was unsuccessful, no fraudulent intent can be ascribed to him in the execution of the

assignment. Says the court, in Morrison *vs.* Shuster, 1st Mackey, at pages 203–4:

> "But the mere silence of a defendant as to his financial condition at the time of sales to him by complainants, even if he had then known himself to have been insolvent, is not sufficient to warrant a rescission of the sales for fraud. An honest though abortive purpose to continue business and pay for goods bought is consistent with the vendee's knowledge of his insolvency, and the purchase is not fraudulent when made with such intent, though founded in delusive and unreasonable expectations."

We therefore submit that there is a total lack of evidence tending to prove a fraudulent intent on the part of Hollander in executing the deed of assignment.

That there is no evidence of a participation by the assignees or any of the preferred creditors, in any alleged fraudulent intent on the part of the assignor.

That the appellees have no such lien upon the property affected by the deed as entitles them to the relief they seek.

And that, therefore, the decree below should be reversed.

LEON TOBRINER,
For the Appellants.

A. S. WORTHINGTON,
Of Counsel for Appellants.

Office Supreme Court U. S.
FILED.
MAR 16 1896
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 146.

JUSTUS HOLLANDER ET AL., APPELLANTS,

vs.

MARTIN S. FECHHEIMER.

CALCULATION SHOWING THE SUM REALLY IN DISPUTE BETWEEN THE PARTIES, AS SHOWN BY THE WHOLE RECORD.

Judgment mentioned in paragraph three of appellee's bill (Exhibit "A," Record, p. 15).....	$1,000 00
Interest at 7 per cent. from February 15, 1886, to date of decree of general term, April 22, 1892, 6 yrs. 2 mos. 7 days.....	433 11
Costs.....	21 00
Promissory note, described in paragraph seven of bill, bearing date February 15, 1886, payable in four months after date, with interest at 7 per cent. until paid (Exhibit "D," Record, p. 27), and shown by the answer of Justus Hollander (Record, p. 36) to have gone into judgment in cause No. 28016, law, supreme court District of Columbia, October 27, 1887..	1,000 00

Interest at 7 per cent. from February 15, 1886, to April 22, 1892.	$433 11
Open account, Exhibit E (Record, p. 27; para. 7, Record, p. 3), and shown to have gone into judgment in cause No. 28016, above mentioned (Record, p. 36), October 27, 1887.....	1,846 50
Interest from October 27, 1887, to April 22, 1892.	498 55
	5,232 27

NOTE.—Sections 713 and 829, Revised Statutes of the United States relating to the District of Columbia, provide—

"The rate of interest upon judgments and decrees, and upon the loan or forbearance of any money, goods or things in action, shall continue to be six dollars upon one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time, except as provided in this chapter."

"Upon all judgments rendered on the common-law side of the court in actions founded on contracts, interest at the rate of six per centum per annum shall be awarded on the principal sum due *until the judgment shall be satisfied*, and the amount which is to bear interest and the time from which it is to be paid shall be ascertained by the verdict of the jury sworn in the cause."

LEON TOBRINER,
For Appellants.

FILED.
MAR 10 18[illegible]
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 146.

JUSTUS HOLLANDER ET AL., APPELLANTS,

vs.

MARTIN S. FECHHEIMER ET AL., APPELLEES.

BRIEF IN BEHALF OF THE APPELLEES.

HENRY E. DAVIS,
JAS. FRANCIS SMITH,
For the Appellees.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

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JUSTUS HOLLANDER ET AL., APPELLANTS,

vs.

MARTIN S. FECHHEIMER ET AL., APPELLEES.

BRIEF IN BEHALF OF THE APPELLEES.

STATEMENT OF THE CASE.

This is an appeal from a decree of the supreme court of the District of Columbia in a cause wherein the appellees were the complainants and the appellants the defendants.

The case is in substance as follows:

The appellees are wholesale clothing merchants in the cities of New York and San Francisco, and the appellant Justus Hollander was for several years engaged in the clothing business in the city of Washington, District of Columbia, and dealt with the appellees. At the time of the filing of the bill the said Hollander was indebted to the appellees as follows: On account of a judgment of the supreme

court of the District of Columbia of the 9th day of July, A. D. 1886, in the sum of $1,000, with interest at the rate of 7 per cent. per annum from the 15th day of February, A. D. 1886; on account of a promissory note of the said Hollander for $1,000, with interest at 7 per cent. per annum from February 15, 1886, until paid, and in the sum of $1,846.50 for goods purchased by the said Hollander from the appellees on the 3d, 7th, and 15th days of April, 1886. The aggregate of the principal amounts of these several indebtednesses is $3,846.50.

On June 15, 1886, the said Hollander made an assignment, with preferences, of all of his property, excepting such as is by law exempt from execution, to the appellant Samuel Bieber. From a statement made by the said assignee, a copy of which is filed with the bill, it appears that the aggregate indebtedness of the said Hollander was $39,020.93, and the value of the property assigned was $18,157.33. It does not appear whether the said amount of $39,020.93 indebtedness includes interest. The preferred debts mentioned in the said assignment amount, without interest, to the sum of $14,744.71. The excess of the assets over the preferred debts is $3,323.62, and the excess of the total indebtedness over the assets, omitting interest, is $20,952.60, and the excess of the aggregate indebtedness over the preferred, omitting interest, is $24,276.22, which said sum represents the amount of the unsecured indebtedness, omitting interest.

The preferred debts are sixty-eight in number, and each of them is assailed by the bill on one ground or another. With the exception of the first two preferred debts, which amount in the aggregate to $858.23, omitting interest, no one of the sixty-eight items is on account of goods or merchandise, but all purport to be on account of borrowed money or for advertising bills. Not one item of the whole sixty-eight is in behalf of a creditor from whom any goods

which were in the said Hollander's store at the time of the assignment were purchased.

The whole of the indebtedness of the said Hollander to the appellees is on account of goods purchased by him from them in October, 1885, and April, 1886, and every one of the said sixty-eight preferred debts, excepting the 1st, 2d, 6th, and 63d, bears a date subsequent to one or the other of those dates. Of the said sixty-eight preferred debts sixteen bear date on various days in May, 1886, beginning with the 4th day of that month, and aggregate $4,443.98, and ten bear date on various days in June of that year from the 3d to the 11th, inclusive (which latter date is within four days of the assignment), and aggregate $2,325. The total amount of the preferred debts bearing date in the months of May and June, 1886, is thus $6,768.98, or within a little of one-half of the total of the preferred debts. Others of the preferred debts bear date in the following months and for the following amounts, respectively: January, 1886, $600; February, 1886, $1,800; March, 1886, $1,200; April, 1886, $290, making a total of $3,890, which, when added to those bearing date in the months of May and June, make an aggregate of $10,658.98 for the months of January, February, and April, and the first half of June, 1886, out of the total of $14,744.71, of all the said sixty-eight preferred debts.

The bill alleges on this showing that the said Hollander must have known for more than a year prior to the assignment that he was insolvent, and that when he made his spring purchases of the appellees his whole assets could not have amounted to more than one-third of his indebtedness, even considering the assets at their appraised value, and that the appellees did not discover how they had been imposed upon in the premises by the said Hollander until after the said assignment. And it further alleges that of the preferred debts, $4,550, all alleged to be due to banks, were created, according to their dates and the date of the assignment,

within forty days, and some of them within five days of the assignment, and that if the moneys represented by these debts were obtained from the said banks, according to the showing of the said assignment, they were fraudulently concealed by the said Hollander from his creditors. And, obviously, if they were created prior to the purchases from the appellees, they exhibit the said Hollander in a condition of hopeless insolvency at the time of making the said purchases.

As tabulated by the assignee (Rec., 76), the preferences in the assignment appear as follows:

To Elias Travers	$6,780	
" National Bank of Washington	2,325	
" Riggs & Co	2,025	
" National Metropolitan bank	200	
" Willie Hollander	293	83
" James Hollander	564	40
" National Republican	160	
" Julius Lansburgh	1,566	48
" Evening Critic	130	
" Washington Post	200	
" W. H. Slater	400	
" Louis Heller	100	
Total	$14,744	71

Among these preferences are the following:

To Willie Hollander	$293	83
" James Hollander	564	40
" note of Edward Hollander	825	
" notes endorsed by James Hollander	1,200	
" note of Theodore Hollander	625	
" notes endorsed by Theodore Hollander	6,600	
" note endorsed by Hollander Bros	300	
" notes of A. Kaufman	275	
Total	$11,508	23

Willie, James, Theodore, and Edward Hollander are brothers of the said Justus Hollander, and A. Kaufman is his brother-in-law. (Rec., 69.)

To the bill of complaint were annexed certain specific interrogatories, having for their object the ascertainment, among other things, of the amount of goods purchased by the said Hollander in the spring of 1886, the amount and character of goods he had in his store prior to the 1st of March, 1886, and the market value of his stock at that time, and a statement of his daily sales between the 1st of February and the 15th of June, 1886. In answering the bill the said Hollander set forth (Rec., 54–56) the purchases made by him in the spring of 1886, which, according to the record, aggregate in amount $19,800.26. The interrogatory in relation to his indebtedness on the 1st of February, 1886, was so answered (Rec., 56–58) as to make the ascertainment of his indebtedness at the time mentioned a matter of somewhat difficult calculation. In answering the interrogatory as to the amount and character of goods in stock on the 1st of March, 1886, he simply stated (Rec., 59) that the amount and character of the goods in stock consisted of gent's furnishing goods, hats, caps, and clothing, the value of which he could not state, as he had not taken stock for some time. The statement of daily sales called for (Rec., 66 to 69) shows the following:

Sales during February		$1,109 42
"	" March	1,414 75
"	" April	1,906 56
"	" May	2,001 78
"	" June	907 46
Total		$7,332 92

By the aid of these figures and the assignee's report the condition of Hollander in the spring of 1886 may be approximately arrived at as follows:

Stock and book accounts at time of assignment.	$17,805 33
Sales in spring of 1886	7,339 92
Total	$25,145 25
Deduct purchases in spring of 1886	19,800 26
Difference	$5,344 99

It will be observed that in this statement the sales are given at their actual figures, which include the profit made thereon. This profit may safely be stated at at least one-third, or $2,446.64. Deducting this sum from $5,344.99, we have $2,898.35 as the probable actual value of Hollander's stock and book accounts in the spring of 1886, exclusive of the profits made by him during that season.

As against this, his condition as to indebtedness appears as follows:

Total indebtedness reported by assignee	$39,020 93
Cost of purchases in spring of 1886	19,800 26
Excess of indebtedness over purchases	$19,219 67

In other words, being already in debt $19,219.67, with probable assets amounting to $2,898.35, he incurred in the spring of 1886, just prior to the assignment, an additional indebtedness of $19,800.26.

Another of the special interrogatories filed with the bill (Int. 1, Rec., 13), calls for the exposition by him of the true amount of his indebtedness to each one of his preferred creditors, going back to the origin of each transaction and stating what it was for. The answer to this interrogatory (Rec., 40 to 54) shows that a very large part of the preferred indebtedness was incurred long prior to the spring of 1886 and to October, 1885. This shows clearly that for a long time prior to the incurring of the indebtedness to the appellees, and without regard to his sales during the fall and

winter of 1885 and the spring of 1886, Hollander was hopelessly insolvent, a condition of which he must have known, and indubitably did know, as is evidenced by the precise answer to the interrogatory referred to. Any denial, therefore, by him of the allegations of the bill (par. 9, Rec., 4) that he well knew of his insolvency and that he concealed that fact from the complainants is plainly futile.

The defendants, appellants, demurred to the bill generally (Rec., 30–31). Although the grounds of the demurrers are not stated in the record, the main ground was that the bill contained no allegations of knowledge by the assignee or preferred creditors of the facts from which fraud on the part of the said Hollander was inferred and imputed to him. On hearing, these demurrers were sustained by the court in special term (Rec., 33), but on appeal this action of the special term was reversed by the general term (Rec., 34). Thereupon the bill was answered by the defendants, appellants, and two depositions in support of the bill were taken (Rec., 94–121). On the hearing in the special term, at which reliance was principally placed upon the answers of the said Hollander and his assignee, Bieber, the bill of complaint was dismissed (Rec., 121). On appeal the general term reversed the action of the special term, and decreed that the assignment was fraudulent and void as against the complainants, appellees, and that the said complainants recover from the assignee the amount of their judgment set out in the bill, together with costs, and remanded the cause to the special term for further proceedings. The opinion of the general term is set forth in the record at pages 124 to 131.

From this action of the general term of the supreme court of the District of Columbia the present appeal was taken.

ARGUMENT.

I.

That the assignment in question was made in attempted fraud of the appellees will be argued from the facts appearing in the foregoing statement of the case, aided by the depositions above referred to in support of the bill, and especially the deposition of the appellee, Fishel (Rec., 95–103); from which it appears, among other things, that the usual amount of purchases for a given season by a given dealer in such business as that of Hollander was 33⅓ per cent. less than the amount of sales; so that, having regard to the amount of sales above shown, namely, $7,339.92, the purchases made by Hollander during the period covered by those sales should not have exceeded $4,893.28, whereas they were in fact $19,800.26, showing an excess of purchases over the proper amount of $14,906.98; and when it is considered that, as above shown, the excess of his indebtedness over the amount of those purchases was $19,219.67, Hollander's fraudulent conduct is transparent.

II.

It remains to consider the main contention of the appellants, which is, as matter of law, that, as the bill does not allege and the evidence does not show any knowledge by the assignee or preferred creditors of Hollander's fraud or any participation by them therein, the appellees are not entitled to relief.

1. Knowledge by the assignee or preferred creditors of the assignor's fraudulent purpose is not necessary and plays no part in the case.

An assignment for the benefit of creditors is a voluntary conveyance, and neither the assignee nor any preferred

creditor can be considered a *bona fide* purchaser for value. Neither pays any consideration for the execution of the deed of assignment, or surrenders any security, or releases any debt, or assumes any obligation whatever, and if the deed should be set aside neither would be in any worse position than before its execution.

The intent of the assignor in making the assignment is the material and, indeed, the only matter of consideration in determining its validity where it is assailed as fraudulent; and a fraudulent intent on the part of the assignor alone, without any knowledge thereof or participation therein by the assignee or preferred creditors, is sufficient to avoid the assignment.

These propositions are supported by so many of the adjudged cases that it will suffice merely to refer to some of them:

Stickney *vs.* Crane, 35 Vt., 89.
Seaving *vs.* Brinkerhoff, 5 John. Ch., 331.
Mead *vs.* Phillips, 1 Sandf. Ch., 83.
Rathburn *vs.* Platner, 18 Barb., 272.
Root *vs.* French, 13 Wend., 570.
Wilson *vs.* Forsyth, 24 Barb., 105, 120.
Griffin *vs.* Marquardt, 17 N. Y., 28.
Van Heusen *vs.* Radcliff, 17 N. Y., 582.
Loos *vs.* Wilkinson, 110 N. Y., 195, 209.
Knowles *vs.* Lord, 4 Whart., 500.
In re Fulton's Estate, 51 Pa. St., 211.
Ratcliffe *vs.* Langston, 18 Md., 390.
Foley's Ad'r *vs.* Bitte, 34 Md., 646, 653–'4.
Main *vs.* Lynch, 54 Md., 658.
Bank *vs.* Payne, 86 Ky., 446.
Savage *vs.* Knight, 92 N. C., 493.
Frow *vs.* Downman, 11 Ala., 880.
Ruble *vs.* McDonald, 18 Iowa, 493.
Talcott *vs.* Henderson, 31 Ohio St., 162, 165.
Willis *vs.* Henderson, 4 Scam., 13.

Pierson *vs.* Manning, 2 Mich., 450.
Flanigan *vs.* Lampman, 12 Mich., 60.
Farrington *vs.* Sexton, 43 Mich., 454.
Gere *vs.* Murray, 6 Minn., 223.
Bennett *vs.* Ellison, 23 Minn., 242.
Lesher *vs.* Getman, 28 Minn., 93.
Kaiser *vs.* Heavenrich, 5 Kans., 325.
Hairgrove *vs.* Millington, 8 Kans., 321, 480.
Adler *vs.* Ecker, 1 McCrary, 256.
Doggett *vs.* Herman, 16 Fed. R., 812.
Clements *vs.* Berry, 11 How., 409.
Donaldson *vs.* Farwell, 93 U. S., 631.
Bank *vs.* Bates, 120 U. S., 564.
Waite, Fraud. Conv., sec. 319.
Bump, Fraud. Conv., secs. 268, 190.
Burrill, Assignments, secs. 307 *et seq.*

2. A fraudulent purchase of goods gives no title to the fraudulent purchaser as against the vendor, nor does his transfer of the goods to a *bona fide* creditor of his in payment of a pre-existing debt vest the title in such creditor. On the contrary, if the creditor detains the goods after demand to deliver them up, the vendor may maintain replevin against him for the goods.

Root *vs.* French, 13 Wend., 570.
Ratcliffe *vs.* Langston, 18 Md., 383.

And where a party by fraudulently concealing his insolvency and his intent not to pay for goods induces the owner to sell them on credit, the vendor, if no innocent third party has acquired an interest in them, is entitled to disaffirm the contract and recover the goods.

Donaldson *vs.* Farwell, 93 U. S., 631, 633.
See Johnson *vs.* Monell, 2 Keyes (N. Y.), 655.

3. It remains only to examine certain opinions of this Court, upon some of which reliance was had by the appellants in the court below, and none of which will be seen upon examination to be out of accord with the contention of the appellees.

In Marbury *vs.* Brooks, 7 Wh., 556, a deed had been made by one Fitzhugh who had forged certain notes. The grantee, Marbury, was Fitzhugh's son-in-law. The conveyance was to Marbury in trust to sell the property conveyed, which was all that Fitzhugh had, and, after payment of the expenses of sale, to divide the proceeds among the holders of the forged notes *pro rata*, and the surplus, if any, to pay to Fitzhugh's creditors *pro rata*.

Testimony having been given tending to show that the design of both Fitzhugh and Marbury was that the former might escape prosecution, the trial court gave to the jury an instruction which this Court thus describes (p. 573):

"It consists of two parts: First, that which authorizes the jury to infer the motive and intent with which the deed was executed; and, secondly, that which declares the deed 'fraudulent and void as against the plaintiff' if the facts given in evidence by him as stated in the bill of exceptions are believed to be true."

The Court held the first branch of this instruction not "too strongly expressed;" but the second branch it held erroneous, saying (p. 574):

"Had the motive and intent with which the deed was executed and received been left to the jury, and had they been instructed 'that if they believe it to have been executed and received with the motive and intent of prevailing with the holders of the forged notes to forego a prosecution for the said forgeries, then the deed would be fraudulent and void against the plaintiff,' the single question of law respecting the validity of such a deed would have been presented to

the court; but the instruction as given does not depend on this conclusion. It depends on their believing that the facts stated in the bill of exceptions are proved, and they are informed that if those facts are true the deed is void. *To sustain this instruction the facts must be such as clearly to amount to fraud.*"

Then, remarking that the transaction impugned as a fraud was not such (p. 575), the Court proceeded:

"If Fitzhugh had remained and his crime had not been discovered he might have sold all the property comprised in this deed and might have applied the money to the notes he had counterfeited. His hope that this act would conceal the crime and save him from punishment would not have vitiated the transaction.

"Had he, on determining to abscond, executed to Mr. Marbury the very deed now in question, conveying all his property in trust for the creditors who are preferred in that deed, and afterwards for other creditors, without any previous communication with any person whatever, would such conveyance have been distinguishable from an absolute sale? Would the hope in his own bosom that such conveyance might have the effect of exempting him from a prosecution, unaccompanied by any act of the favored creditors giving countenance to such hope, avoid the deed? (P. 578.)

. . .

"It is, then, the opinion of the Court that, even supposing the deed to have been executed in the hope and expectation that it would operate as a suppression of the prosecution, *the favored creditors having done nothing to excite that hope and being entirely ignorant of the transaction, ought not to be affected by it.*

"But that this was the motive to the deed, though highly probable, is not certain. Fitzhugh might have been impelled by other considerations to give these particular creditors the preference. The court was not, we think, at liberty to say that the deed was void in consequence of any motive which *the court* might impute to its maker. The motive was a fact of which the jury was to judge." (Pp. 580, 581.) . . .

"There are several opinions given by the court which are

dependent on this single principle: that the communications between Fitzhugh and Marbury, though unknown to the banks, avoid the deed. The cause, so far as it is now before the court, essentially depends on this single principle. This Court is of opinion that in this the circuit court erred, and that the deed is not void, unless Marbury acted with the concurrence or knowledge *of the banks*, or unless they assented to it under some engagement, express or implied, *to suppress the prosecution.*" (P. 581.)

This case is thus seen to mean, at most, simply this: That a debtor in straits may choose which of his creditors he will pay, and it is no matter what may be the motive which determines his choice, provided that the favored creditors are not parties to any conduct on his part which the law characterizes as fraudulent or unlawful; and in the case the conduct imputed amounted to the compounding of a felony, which of itself, wholly without regard to any other consideration, would have avoided the deed and deprived the favored creditors of all benefit under it; but the case does not hold that a mercantile debtor, hopelessly insolvent, may by fraud procure from the merchants with whom he deals the merchandise with which he means to pay his favored creditors. In such case as the latter, the question really is whether the purchase is not made under such circumstances as to entitle the seller to rescind, or to do what is equivalent, namely, invoke the aid of equity to say that he shall not lose what he innocently parted with to his fraud-intending debtor.

In the same case, under the name of Brooks *vs.* Marbury, 11 Wh., 78, the Court subsequently held, in effect, as before, that concurrence by Marbury in Fitzhugh's hope of escaping prosecution would not change the situation, the preferred creditors, who alone could control the prosecution, being themselves innocent.

This case was distinguished in Stewart *vs.* Spencer, 1 Curt., 165, by Curtis, J., who said of the deed under consideration:

"That deed was not alleged to be fraudulent, but void at common law."

So far as pertinent here, the case of Tompkins *vs.* Wheeler, 16 Pet., 106, speaks only to the point that a debtor in making an assignment has the right to prefer creditors, which, until the recent act of Congress (27 Stat., 474), was unquestioned law in this jurisdiction.

In Peters *vs.* Bain, 133 U. S., 670, the question was not presented, as the Court found an absence of fraud on the part of the grantors. (P. 690.)

The case chiefly relied upon by the appellants is Emerson *vs.* Senter, 118 U. S., 3. That was the case of an assignor, surviving partner, fraudulently withholding from the schedule certain partnership property for his own benefit, without the knowledge of the assignee or the beneficiaries of the assignment. This Court, quoting from the decisions of the supreme court of Arkansas, in which State the case arose, said that that court had held that fraud on the part of the assignor, without participation therein by the assignee and the beneficiaries of the assignment, would not avoid the instrument. The Court prefaces its examination of the Arkansas authorities with these remarks (p. 9):

"It is, however, contended that the assignment in question was void because of the fraudulent omission from the schedule by Moores of certain property which constituted a part of the partnership assets, and was appropriated by him to his own use; but this fraud upon the part of Moores did not affect the rights of the assignee and of the beneficiaries of the trust who were ignorant of the fraud of the grantor. *Such seems to be the established doctrine of the supreme court of Arkansas.*"

And the Court adds (p. 10):

"The rule announced by the supreme court of Arkansas is in harmony with the settled doctrines of this Court and accords with sound reason (*Marbury vs. Brooks*, 7 Wh., 556, 577; *Brooks vs. Marbury*, 11 Wh., 78, 89; *Tompkins vs. Wheeler*, 16 Pet., 106, 118). . . . If the intentional omission by the grantor of certain property from his schedule and his appropriation of it to his own use was such a fraud as would vitiate the deed where the assignee or preferred creditors have previous notice of such omission, that result cannot happen where they were ignorant of the fraud at the time they accepted the benefit of the conveyance."

There is no analogy whatever between that case and the case at bar. That was a case of a mere omission of a part of the debtor's property from the assignment, not even a diversion of it from one creditor to another. The case at bar is of a fraudulent obtaining of property from one creditor and its attempted application to the debt of another.

But, apart from this, it is submitted with all deference that the comment of the court below on the case of Emerson *vs.* Senter (Rec., 130, 131) is sound, and that the case decides nothing militating against the position here taken by the appellees.

"The question of the construction and effect of a statute of a State regulating assignments for the benefit of creditors is a question upon which the decisions of the highest court of the State, establishing a rule of property, are of controlling authority in the courts of the United States."

South Branch Lumber Co. *vs.* Ott, 142 U. S., 622, 628.
Peters *vs.* Bain, 133 U. S., 686.
Crawford *vs.* Neal, 144 U. S., 585, 595, 596.
May *vs.* Tenney, 148 U. S., 60, 64, 65.

In the case of Emerson *vs.* Senter, therefore, it was unnecessary for the court to go further when it had once ascertained the rule laid down by the supreme court of Arkansas

in construing the statute of that State in question; and the multitude of authorities above cited show conclusively that, tested by common-law principles, the participation of neither the assignee nor a favored creditor in the fraudulent intent is necessary to the voiding of the assignment.

Respectfully submitted.

HENRY E. DAVIS,
JAS. FRANCIS SMITH,
For the Appellees.

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vs.

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I.

The defendants, the appellees, have cited in their brief a number of authorities, with quotations *in extenso*, in relation to the kind of fraud and the character of the proof necessary to invalidate an assignment. None of these propositions meet the case made out by the appellees. It is not our contention that the insolvency of the debtor at the time of the creation of the debt, or even fraud on his part in its creation, is alone sufficient ground for setting aside a subsequent assignment. What we do contend is, as indicated in the opinion of the court below (Rec., p. 124), that in this particular case the desperate and irretrievable insolvency of

the assignor at the time he purchased the goods, in connection with the other significant circumstances in the case, which will be referred to hereafter, removes every doubt from the conclusion that the assignor here was actuated by a fraudulent purpose throughout, commencing with the purchase and culminating with the assignment.

If Justus Hollander in the spring of 1886, realizing his hopeless condition, as he must have done, conceived the idea of purchasing goods to the limit of the credit which his confidential creditors enabled him to maintain and three times in amount what his business justified, without the hope or intention of paying for them, designing to wipe out his confidential indebtedness by means of an assignment at a convenient time, and if he carried that purpose into execution, we submit such an assignment would be fraudulent, notwithstanding the authorities cited on the other side.

Do the facts in the case show such a purpose on the part of Hollander? The court below, after hearing and rehearing twice, held that they did. We contend that the inference of such a purpose is irresistible.

These facts are mainly drawn from Hollander's answers to the interrogatories propounded in the bill.

On February 1, 1886, Hollander was in debt to the amount of $20,769.70, at the lowest calculation. Of this amount $13,462.60 was confidential indebtedness, consisting of notes, upon most of which his relatives and friends were liable. His assets at this time amounted to about $2,346.77. He then commenced laying in stock, and purchased goods as follows:

February, $2,531.62; March, $9,157.19; April, $7,916.57; May, $469.16, making a total of $21,085.54. His sales during these months were: February, $1,119.36; March, $1,414.55; April, $1,898.76; May, $2,020.60, and June, $907.46, amounting in all to $7,360.73. On the $21,000 worth of goods which Hollander bought that spring *he didn't pay a dollar,* and on the 16th of June, 1886, he made

an assignment with preferences which practically absorbed all the assets and which provided for the payment of his confidential indebtedness to the absolute exclusion of his merchandise creditors, with the sole exception of Willie Hollander, the assignor's brother, who is preferred for a merchandise debt. The assignee testified (Rec., p. 104, *et seq.*) that he took possession of the store, retaining Justus Hollander in his employ. He ran the store for six or seven months, selling off the goods, and finally sold the remaining stock in bulk to Theodore and James Hollander, brothers of the assignor and preferred creditors, by whom the business was continued, Justus Hollander remaining connected with the establishment as before. The stock was sold to the two brothers for $5,036, part paid in cash and part in a note. (Rec., p. 106.)

The foregoing figures are derived from Justus Hollander's answers to the interrogatories. The amount of his purchases and the amount of his sales during the spring of 1886 are direct replies to the interrogatories, although without footings (Rec., pp. 54 and 66). He was asked to furnish a list of his debts on February 1, 1886, but to this he does not give a direct answer. He furnishes a list of his merchandise debts on February 1, 1886 (Rec., p. 56 *et seq.*), which foot up $7,317.10. From a study of the preferences (Rec., pp. 41 to 53) we find that of the preferred debts, $10,335.88 was incurred before February 1, and from the list of the payments (Rec., p. 60 *et seq.*) we find that $2,876.92 of the amount paid out during the spring of 1886 was for confidential debts incurred before February 1, making the total debt on February 1, 1886, $20,769.70.

Hollander was interrogated as to his assets at that time, and his reply is that he does not know; but we are able to arrive at that with reasonable definiteness. The assignee, Mr. Bieber, an experienced clothier, testified that he realized one hundred cents on the dollar on the sale of the goods. He was asked by Mr. Tobriner (Rec., p. 109):

"Q. During the seven months you had charge of the stock was anything sold under cost price?
"A. No, sir."

The assignee's report (Rec., p. 81) shows that the amount realized from the sale of the stock was $16,071.58. The sales between February 1 and the time of the assignment amounted to $7,360.73. The sum of these two amounts, $23,432.31, represents the value of all the stock Hollander had in the store. Deducting the cost of the new stock, $21,085.54, we have $2,346.77 as the value of the stock on February 1. The sales during February, March, April, May, and June amounted to $7,360.73. The amount of purchases in Hollander's business should have been 33⅓ per cent. less than the sales, the one-third being the margin allowed for profit (Fisher's deposition, Rec., pp. 95–103), so that his purchases should not in the ordinary course of business have amounted to more than $5,000 at most, when as a matter of fact they amounted to four times that sum.

Counsel for defendants labor to show that Justus Hollander was a well-meaning but unfortunate merchant laboring to extricate himself from debt and entertaining a reasonable hope of doing so. If his purpose was honest, with the load of debt he was already carrying, ordinary business sense would have prompted him to be cautious in creating new obligations. An ordinary business man with sufficient capital would hesitate before buying in a stock in excess of what his business warranted; but this debtor, with $20,000 of debt already on his shoulders, piles up another $20,000, which in his wildest dreams he never could hope to pay. Such dealing is utterly incompatible with honesty of purpose. He could have had but one object, viz., to wipe out his confidential indebtedness by victimizing his merchandise creditors.

Stress is laid by counsel for appellants on the fact that Hollander continued making payments during the months

immediately preceding the assignment, and that he paid the appellees $1,044.65 within sixty days prior to his failure. An examination of the lists of payments (Rec., p. 60 *et seq.*) will show that during February, March, and the first part of April Hollander made occasional payments on account of old merchandise debts. He was then laying in his new $20,000 stock, and clearly it was advisable to make an occasional payment, or his scheme might be put in jeopardy; *but he didn't pay a dollar* on account of merchandise after he got the stock in his store and he never paid a dollar on the new spring goods. Nearly all of his payments during this time, outside of current expenses, are to Travers, Baum, Lansburgh, Heller and his brothers, etc., whose names are so conspicuous among the preferred creditors. It is difficult to account for many of these payments. They do not appear in the list of debts, either merchandise or loans, furnished by Hollander, and on what account these payments were made is a mystery.

Counsel for appellants say that the purchases in 1886 were no more fraudulent than those in previous years, from 1879 down. We don't know what Hollander's transactions were in previous years, but there is enough in the record to show that Hollander's financial condition was going from bad to worse constantly since he began business, and in this connection attention is called to an audaciously misleading table on page 29 of defendant's brief. This schedule purports to show comparisons between the amounts of the preferred debts as they were at the time of the assignment and the original amounts of these debts, the object being to show that Hollander was gradually reducing his indebtedness. The preposterous result is here reached that Hollander's preferred debts originally amounted to $35,268.98, which he had gradually reduced to $12,796, the figure to which those mentioned amounted at the time of the assignment. Take the Travers preferences, which appear at the foot of the column, for example. They amounted at the

time of the assignment to $6,780. According to the table, the original amount of this debt was $22,500. The history of the Travers preference is set out on pages 42, 43, and 44 of the Record.

It began with a loan of $500 in 1879, and from that time, year after year, loan was added to loan until 1886, the year of the assignment. All these sums loaned from 1879 to 1886 are added together by counsel for appellant to make the $22,500 which he has the assurance to say represents the original amount of the Travers debt; just as if Travers had loaned $22,500 in 1879, which Hollander had gradually and laboriously reduced to $6,800 at the time of the assignment.

The truth is exactly the reverse. The original loan in 1879 was $500, and then other successive loans followed, which, although Hollander kept paying from time to time, gradually grew to $6,780 at the time of the assignment.

Here is the exact state of the Travers debt, which may be taken as a sample of all the others:

On June 15, 1886, the date of the assignment, the amount was	$6,780
On June 15, 1885, the amount was	5,900
On June 15, 1884, the amount was	3,375
On June 15, 1883, the amount was	2,600
On June 15, 1882, the amount was	1,250
On June 15, 1881, the amount was	500

An extract from an opinion of the court in Atkinson *vs.* Judson, 5 Ohio, 295, is in point:

"The practice among speculating traders of shattered and desperate circumstances of accumulating property with a desire of securing the means of satisfying the claims of confidential creditors who contribute in various ways to keep up the credit upon which the property has been procured, and then passing their effects so procured into the hands of trustees to be protected from legal process and to be exhausted

in satisfying those preferred claims, leaving all other creditors without a farthing, can hardly be justified in any sound moral or legal principle."

That is precisely the situation here.

When Hollander bought these goods the possibility of paying for them was beyond his wildest dreams. All of that stock was sold and realized on fairly well (see Bieber's testimony), and there are yet $24,000 of merchandise debts unpaid.

II.

In view of the insistence of the appellants upon the main contention noticed on page 8 of the main brief for the appellees, viz., that knowledge by the assignee or preferred creditors of a fraudulent intent on the part of the assignor is necessary to avoid the assignment, and as the brief for the appellants has been filed since that for the appellees, it is deemed advisable to restate with greater particularity the argument for the appellees on that contention.

Discussion of this contention necessarily revolves about the question whether, in the case of an assignment for the benefit of creditors, the assignee and preferred creditors or either can be brought within the class of *bona fide* purchasers for value without notice. The learned opinion of the court below and all the adjudged cases recognize this. In that opinion the statute of Elizabeth is aptly summarized thus (Rec., pp. 126–'7):

"Stated in brief terms, these provisions declare that every alienation of real or personal property made to the end and intent of hindering, delaying, or defrauding the creditors of the alienor shall be of no effect as an alienation except when such alienation is made to an innocent purchaser for a valuable consideration."

If this be sound, it necessarily follows that any one claiming under such an alienation must show, at the outset, that he is such innocent purchaser. That the court's proposition is sound the very language of the statute shows.

Let us, then, consider the question whether an assignee or preferred creditor is a *bona fide* purchaser for a valuable consideration and without notice.

1. Back of this question lies the other, What constitutes a *bona fide* purchaser? And perhaps the best definition of such a purchaser is that given by Perry (Trusts, p. 218):

"A *bona fide* purchaser is defined to be one who at the time of his purchase advances a new consideration, surrenders some security, or does some other act which leaves him in a worse position if his purchase should be set aside."

Quoted in Alden *vs.* Trabee, 44 Conn., 455.

Equivalent definitions are to be found, more or less clearly expressed, in many of the adjudged cases—*e. g.*:

Webster *vs.* Van Steenbergh, 46 Barb., 211.
Wood *vs.* Robinson, 22 N. Y., 564.
Wormly *vs.* Wormly, 8 Wheat., 421.

It is, then, essential to a *bona fide* purchase that some consideration must pass from the purchaser for the *act constituting the purchase.*

2. Tried by this test, it is manifest that neither an assignee nor a preferred creditor in a general assignment is a *bona fide* purchaser for value, because neither paid any consideration, surrendered any security, released any debt, or assumed any obligation for the execution of the assignment, and if it were set aside neither would be in any worse position than before its execution.

The cases in support of this proposition are so numerous that their mere enumeration would needlessly prolong this

brief. Among them, however, may be mentioned the following:

Clements *vs.* Berry, 11 How., 409.
Bank *vs.* Bates, 120 U. S., 564.
Stickney *vs.* Crane, 35 Vermont, 94.
Knowles *vs.* Lord, 4 Whart., 500.
Fulton's Estate, 51 Pa. St., 211.
Mead *vs.* Phillips, 1 Sandf., ch. 83.
Root *vs.* French, 13 Wend., 570.
Griffin *vs.* Marquardt, 17 N. Y., 29.
Ratcliff *vs.* Langston, 18 Md., 390.
Bank *vs.* Payne, 86 Ky., 446.
Savage *vs.* Knight, 92 N. C., 499.
Frow *vs.* Downman, 11 Ala., 885.
Ruble *vs.* McDonald, 18 Iowa, 496.
Willis *vs.* Henderson, 4 Schm., 19.
Flanigan *vs.* Lampman, 12 Mich., 60.
Farrington *vs.* Sexton, 43 Mich., 454.
Gere *vs.* Murray, 6 Minn., 223.
Bennett *vs.* Ellison, 23 Minn., 254.
Hairgrove *vs.* Millington, 8 Kans., 321.

Cf. Smith *vs.* Perry, 56 Ala., 266, in which an assignee in bankruptcy was held not a purchaser.

3. It follows that the relation of either an assignee or a preferred creditor to the assignor's fraud is wholly immaterial.

It is the intent of the assignor alone which determines the character of the assignment, and a fraudulent intent on his part only, without regard to participation by the assignee or preferred creditors, will avoid the assignment.

The cases to this effect are practically without number. See those already cited, especially—

Savage *vs.* Knight, 92 N. C., 499.
Griffin *vs.* Marquardt, 17 N. Y., 29.
Mead *vs.* Phillips, 1 Sandf. Ch., 83.

Root *vs.* French, 13 Ward, 579.
Ruble *vs.* McDonald, 18 Iowa, 496.
Bank *vs.* Payne, 86 Ky., 446.

And, in addition, the following:

Donaldson *vs.* Farwell, 93 U. S., 633.
Fuller *vs.* Ives, 6 McLean, 479.
Buchter *vs.* Clark, 12 Blatch., 257.
Adler *vs.* Ecker, 1 McCreary, 156.
Doggett *vs.* Herman, 16 Fed. Rep., 815.
Rathburn *vs.* Platner, 18 Barb., 273.
Wilson *vs.* Forsyth, 24 Barb., 120.
Van Heusen *vs.* Radcliff, 17 N. Y., 582.
Loos *vs.* Wilkinson, 110 N. Y., 209.
Foley's Adm'r *vs.* Bitte, 34 Md., 652.
Laughton *vs.* Harden, 68 Mo., 208.
Lesher *vs.* Gatman, 28 Minn., 95.
Kayser *vs.* Heavenrich, 5 Kans., 202.
Waite, Fraud. Con., sec. 319.

The reason for the rule thus so widely held is on the surface: the contrary rule would allow any fraudulent debtor to cheat any of his creditors whom he might select for that purpose, by an act of the most barefaced fraudulent character, provided only that he should keep his assignee and his preferred friends ignorant in fact of his purpose. Besides, the very language of the statute makes the assignor's fraud the sole test: its provisions as to alienees are of punishment for him who knowing the fraud yet seeks to make use of the instrument of assignment, and of protection to him who, in consideration of the execution of the instrument, has been induced to part with value.

Wilson *vs.* Forsyth, 24 Barb., 120.

Respectfully submitted.

HENRY E. DAVIS,
JAS. FRANCIS SMITH,
For the Appellees.

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RECORD, CASE No. 15,014.

162-329

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO., ~~1049~~. ~~728~~ ~~388~~ 105

THE GREAT WESTERN TELEGRAPH COMPANY, PLAINTIFF IN ERROR,

vs.

HIRAM PURDY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED APRIL 11, 1892.